

103
**LEGISLATIVE HEARING ON H.R. 1, THE FAMILY
AND MEDICAL LEAVE ACT**

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Legislative Hearing on H.R. 1, The...

HEARING
BEFORE THE
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS
OF THE
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JANUARY 26, 1993

Serial No. 103-1

Printed for the use of the Committee on Education and Labor



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LEGISLATIVE HEARING ON H.R. 1, THE FAMILY AND MEDICAL LEAVE ACT

TUESDAY, JANUARY 26, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., Room 2175, Rayburn House Office Building, Hon. Pat Williams, Chairman, presiding.

Members present: Representatives Williams, Sawyer, Unsoeld, Mink, Roemer, Kildee, Klink, Strickland, Becerra, Green, Petri, Gunderson, Miller, Roukema, Hoekstra, and McKeon.

Also present: Representatives Ford, Owens, Martinez, Payne, Murphy, Woolsey, Engel, Romero-Barcelo, Barrett, Boehner, Fawell, Ballenger, and Goodling.

Staff present: Jon Weintraub, staff director; Fred Feinstein, chief counsel; Gail Brown-Hubb, staff assistant; Paula Larson, staff assistant; and Chris Treadway, staff assistant.

Minority staff present: Randel K. Johnson, labor coordinator; Edwin J. Gilroy, professional staff member; and Tim Butler, staff assistant.

Chairman WILLIAMS. Good morning. I call to order this hearing, the first hearing of the Labor-Management Relations Subcommittee for the 103d Congress.

I am delighted to convene the subcommittee today for this first hearing and particularly pleased that the first hearing is to consider the Family and Medical Leave Act, a bill on which we have been working for eight years. We convene this hearing with a sense of excitement and certainty that the many years of hearings, mark-ups, and hard work that the members of this subcommittee as well as the full committee have spent on the bill. We know that they are about to be rewarded by the enactment of this important piece of legislation.

I want at the outset to commend Representative Pat Schroeder; Mr. Clay, the former chairman of this subcommittee; Chairman Ford; Ranking Member Roukema; Ranking Member Goodling; and all the members of the subcommittee who have worked really quite diligently during the years and have produced a bill that will make a real difference in the lives of America's workers.

I am also very pleased to welcome the new Secretary of Labor to the subcommittee.

The breadth of knowledge and expertise that you bring to the Department has excited us all. Already in the time that you have been on the job, my subcommittee has been able to use the expertise of the career staff in your Department. They have helped us with suggestions about technical fixes to this legislation. I don't think it is entirely inappropriate to say that for the first time since the consideration of the Family Leave Act began we have had the benefit of advice from those who will be charged with administering this law. The Department of Labor had finally provided thoughtful assistance that will improve this Act's implementation.

H.R. 1 is the first of many issues on which we hope to be able to work with the new administration. As the Secretary has said on many occasions, our workforce is our most important asset, and our challenge in the years ahead is how best to develop and support that resource.

I, along with members of this subcommittee, look forward to working with the Secretary on job training issues, legislation accompanying a NAFTA agreement, labor law reform, pension reform, ERISA preemption, health care reform, electronic monitoring in the workplace reform, and many other issues that are going to be critical to the success of America's economic performance.

The condition of America's workers will determine this Nation's economic success and this Nation's place in the world order. We truly look forward to working closely with you, Mr. Secretary, on a wide range of issues.

Today's hearing and the markup scheduled for the committee tomorrow is the first large step toward recognizing the changing needs of workers and doing it quickly in this new administration. When this legislation goes into effect in the near future, we will have begun to demonstrate that when we in this town work together, we can make an important, positive difference in the lives of individual Americans.

Let me turn now to the Ranking Member of this subcommittee, Congresswoman Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I appreciate your introductory remarks; as always, they are perceptive and in depth; and I want to take this opportunity at the first official meeting of the Subcommittee on Labor-Management Relations to acknowledge our new subcommittee members on both sides; and I welcome them to what promises to be a very active year.

Mr. Chairman, I guess we all have a sense of having been here before today on this particular subject; and, as Yogi Berra from my home State always said, is this *deja vu* all over again? I would think it would be humorous if it were not such a serious subject that we have before us today, serious because, while we have dithered somewhat and been in gridlock over this subject, by my calculation countless numbers of hard-working, tax-paying Americans have lost their jobs when they have had to remove themselves from the workplace when a medical crisis struck the family.

Speaking for myself and a good number of other Republicans both in the House and in the Senate, where the Senate worked so hard—the other body—we believe that the time has come when we should adopt this as a minimum labor standard for all the workers

of America, and I think this gives us a wonderful opportunity with a clean slate to renew our commitment to this bill and to work out whatever remaining problems there may be.

Not only on family leave do I hold this out as an opportunity for bipartisanship, but particularly on the subjects that you have outlined, Mr. Chairman, other labor-related issues, and most especially, I and my colleagues on this side are most concerned about ERISA law, the law which, for many years has enjoyed strong bipartisan support; we look forward to returning to those days.

Mr. Chairman, I believe certainly you have been wise in holding this hearing for several reasons. Not only has the political landscape changed, but I believe it is also appropriate because we have found that there are critical issues that have not abated in the interim.

We have a number of new members on the committee on both sides of the aisle, and they should have the opportunity to hear both sides of this issue, and it is important that they are able to evaluate the bill on their own and make the constructive changes, as necessary, to act in the best interests of their constituents who are, to repeat, hard-working, tax-paying, good citizens in this country.

Finally, I think this hearing is important for no other reason than to once again highlight how desperately the legislation is needed, because despite the claims of some—and I say only some—in the business community, the fact of the matter is that the voluntary approach is not working.

According to one survey, only 37 percent of all female workers are covered by unpaid maternity leave and only 8 percent of male employees, and those are in companies of 100 or more employees. Yet another survey notes that 30 to 40 percent of the employers with more than 50 workers do not even guarantee sick leave.

The simple fact is that many Americans continue to work under the threat of losing their jobs and their health insurance should they be forced to take leave in order to deal with a medical emergency.

Mr. Chairman, I want to welcome the new Secretary and extend my hand of cooperation to him not only on this issue but on all other issues that are of pressing importance to labor and to the business community. I believe that we can explore more closely if there are technical amendments necessary, but on the whole I believe this bill is a well thought out, well devised answer to the needs of working Americans.

Thank you, Mr. Chairman, and welcome, Mr. Secretary.

Chairman WILLIAMS. Thank you.

Chairman Ford.

Mr. FORD. Thank you, Mr. Chairman.

In the interests of brevity and getting to the Secretary, I would ask that my statement be included at this point in the record, and I just confine my comments to welcome, Mr. Secretary. You have no idea how long and how strongly we have yearned to see you sitting there representing the people that you represent in this Government and representing the approach that this Government is taking.

This bill is before us today not only because of the prompt action of the Chairman of the subcommittee, Mr. Williams of Montana, but also because on the day we were sworn in to begin the 103d Congress, the marvel of the fax machine brought to my office a request from Mac McLarty to have this bill introduced immediately after we were sworn in. It was one of the first things that most of us did.

Because of the President's interest in this legislation expressed so many times this past fall and his subsequent discussions with our leadership, they were kind enough to designate this legislation as H.R. 1, which is saying to the country that the number one priority that we could all agree on quickly for the 103d Congress was family and medical leave, and I trust that this legislation will move in an orderly way, as it did the last time, through the House and Senate, and then when it gets to the other end of the street we will see what difference we made in November of 1992 at the ballot box.

I'm looking forward to your testimony. Your predecessors were not anxious and willing when they came in here to attack this legislation. Your immediate predecessor apologized profusely to members of this committee because, as a Member of Congress, she had strongly supported the concept and the legislation, and made it very clear that she was delivering a message for the White House.

So I want people to understand that you are here delivering a message for the White House too, and while I happen to know that you agree with us on this legislation, you are also speaking for the person you refer to as your old friend, the President of the United States, and I look forward to working with you on this and the many other pieces of legislation that you and President Clinton have on your agenda.

Thank you, Mr. Chairman.

[The prepared statement of Hon. William D. Ford follows:]

STATEMENT OF HON. WILLIAM D. FORD, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MICHIGAN

Thank you Mr. Chairman.

For most of this decade, I have worked with others to enact family leave legislation. Of special significance have been the efforts of Chairman Bill Clay of Missouri, Congresswoman Pat Schroeder of Colorado, and the Chairman of this subcommittee, Mr. Williams of Montana. From the other side of the aisle, Mrs. Roukema of New Jersey has been a true believer in this legislation.

Because of their hard work we have arrived at this point—where we now have the best chance ever for a President to make Family and Medical Leave the law of the land. President Bill Clinton strongly supports this legislation, and I cannot think of a better issue as the first successful initiative between this new Congress and his new administration.

I also want to say at this point, that it is truly a pleasure to be working with our new Secretary of Labor, Robert Reich. For more years than I care to remember, we have been playing defense on this committee; trying to prevent previous administrations from ripping the safety net to shreds. From this day forward, this Congressman and this committee look forward to helping the Secretary of Labor do what is right for American workers and their families.

H.R. 1, The Family and Medical Leave Act of 1993, would guarantee up to 12 weeks of unpaid leave for family members who need time off from work to care for a newborn infant or a seriously ill child, parent or spouse, or to recover from their own disabling illness. This is the same bill we passed overwhelmingly last year—in both houses—but it ran into gridlock at the other end of Pennsylvania Avenue.

Family and medical leave is an issue where the people have been way ahead of the Congress and past administrations. They want a guarantee that they won't lose

their jobs if they need time off to care for their family. They want their government to put into law all of the campaign words about "family values."

If you need further testimony that the concept of legislating family and medical leave has strong, bipartisan support, consider these comments from the U.S. Conference of Catholic Bishops: "The bill would protect people when they take time off from work for important family responsibilities. Parents should not have to choose between the jobs they need and the children who need them . . . this legislation is an affirmation of human dignity and family life."

If you are pro-family, H.R. 1 is legislation you can support wholeheartedly.

H.R. 1 exempts small businesses and excludes certain key employees from coverage if their absence would cause serious economic injury to their employer. The bill reflects a careful balance between the needs of America's families and the interests of public and private employers. It is fair to all.

There is another point to be made here, especially to those who say our standing in the international marketplace would be hurt by enactment of the Family and Medical Leave Act. Japan, Germany, Canada and over 60 other nations have family and medical leave policies—*paid leave in some cases*—and they're not having any problems competing with anyone! Writing in U.S. News and World Report last year, former White House Communications Director David Gergen said "those are nations that truly honor family life."

To one degree or another, almost everyone agrees with the core principle of this legislation: to protect family values and America's children. The Family and Medical Leave Act will make it possible for working Americans to provide care when it is needed without fear of losing their jobs.

I hope we will be true to our vision of America and pass H.R. 1 quickly. It is important to America's families.

Chairman WILLIAMS. Thank you.

Mr. Goodling.

Mr. GOODLING. Mr. Secretary, as I said in our conversation before, if there is anything you can do to help bring the mentality of this committee into the 21st century when we deal with labor-management issues, I will be 100 percent behind you. We are still back in the fifties and the sixties in this committee, and unfortunately that is not going to help us if we are going to be competitive in a very, very competitive world.

So I hope we can get away from this business of seeing what it is we can do to make sure that management and labor do not work together and management, labor, and Government do not work together. If we can get away from the first thought being about treble damages, compensatory damages, punitive damages—you name it—rather than bring about a relationship where we can be competitive in this world, I will certainly be 100 percent behind you, and like the Chairman, I too am interested in helping deal with many of the problems that will come before you.

I have to say that I am very sorry that you are in this position and have to come before us with this piece of legislation as your number one piece, because I know you could have been much more creative, I know you could have made a piece of legislation that would be worth something.

But what we are dealing with here today is legislation, first of all, that is very discriminatory. We have 60 percent of the people who are not covered by this legislation, 60 percent of the workforce. It is a terrible thing for the United States Congress to say to our workforce out there that 40 percent of the workforce are better than the other 60 percent, but that is what we are saying with this piece of legislation.

The second thing we are saying with this piece of legislation is that one size fits all. We have been trying to move to the cafeteria

plan idea, because in this day and age you have a husband working and a wife working; the husband may be covering the family with health insurance, and so the wife, where she works, perhaps the most important thing to her may be child care; that may be what she is interested in. Seventy-three percent in the last survey said that this was not one of their top priorities, and so we take away that opportunity because that employer has just a certain pot from which to deal. So if we say these things are mandated, that means he can't offer a cafeteria plan; they can't negotiate some other items because this is the most important one according to the Congress of the United States.

And then it discriminates the second time, because now we are talking about the 40 percent that are covered and—I don't know—can 10 percent participate? Can they afford to participate? I doubt whether 10 percent could afford to participate. So again we discriminate the next time.

Now I realize making these arguments at this time—I might as well save my breath because H.R. 1 will be signed, it will become law. My hope is that between now and the next three or four weeks we can make it much better than it presently is, and we will be offering amendments that I think will do that. I will probably offer a substitute that I think will do that.

But I would hope that the final product has not been seen at this point because I think all it is is a hollow shell that we are waving out there that really doesn't mean that much. So, again, I am here to work cooperatively, but I hope that we are working in a mentality that will deal with this competitive world in the 21st century.

Thank you, Mr. Chairman.

Chairman WILLIAMS. Thank you.

The former chairman of this subcommittee and chairman of the full Committee on Post Office and Civil Service, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman. I'm extremely pleased to attend this hearing on the family and medical leave bill this morning of which I am an original cosponsor.

Allow me to begin by commending you, Mr. Chairman, for holding this very important hearing and for inviting such stellar witnesses to testify. Let me also commend my colleague, Mrs. Roukema, for being a driving force in keeping this issue before the public and viable and for helping to educate the business community to accept the provisions of this bill in the spirit in which we are legislating it. Hopefully, we will be able to accommodate the gentleman from Pennsylvania in improving it. Once this bill becomes law and we see it is working, hopefully we will be able to include that other 60 percent of the workers that he is so concerned about.

I would like to congratulate you, too, Mr. Secretary, on your appointment to the Clinton administration, and I welcome you today and look forward to working with you in the future on this and other issues.

Since Mrs. Roukema and I first sponsored this bill in 1985, we have been committed to enacting the Family and Medical Leave Act to guarantee workers a right to job-secured leave in times of great medical and family emergency. She and I agree totally on the need for this bill. We disagree, however, on where Yogi Berra is

from. The records will indicate that Yogi Berra was born in my district in St. Louis and lived there all of his life until just recently.

But that aside, we do agree on this bill. We agree because America lags behind all other industrialized nations in this kind of protection for its workers. President Clinton believes, as those of us on this committee—most of us—that the well-being of the American workforce demands this important piece of legislation be passed.

So I look forward today to hearing from the witnesses—you and the other witnesses—on this very dear matter, grave matter, for our workforce.

Thank you, Mr. Chairman.

Chairman WILLIAMS. Thank you. And the chair would find that Yogi Berra was born behind home plate at Yankee Stadium in order to resolve the dilemma.

It is the Chair's understanding that the remaining members on both sides have agreed to forego opening statements with the understanding, of course, that each Member will have five minutes to question the Secretary following his remarks to the committee.

[The prepared statements of Representatives Martinez, Payne, Engel, Klink, Fawell, Boehner, and Olver follow:]

STATEMENT OF HON. MATTHEW G. MARTINEZ, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

Mr. Chairman.

I am fairly certain that most of my colleagues on this committee and in the House are looking forward to a new beginning in the 103d Congress. It should be obvious to Congress-watchers that this is going to be a different Congress for two reasons. First, the great number of new members. And second, a new administration.

I have to believe that our constituents are going to expect us to accomplish many of the things we were not able to in the past and in my opinion there is no better way to start than with the consideration of H.R. 1, The Family and Medical Leave bill.

It's an opportunity for us and the President to lead the way towards a kinder and gentler America and H.R. 1 is a start in that direction. This is a bill that provides people with the ability to care for their loved one without fear of losing seniority, health coverage and even their jobs. Men and women ought to be able to care for their loved ones without the penalty of losing their livelihood.

And finally, for the critics of this bill who say it is too costly or would tie the hand of businesses—I ask them to look at the fact that employers of good conscience are already providing this and they don't consider it either.

In reality, however, H.R. 1 balances the needs of our families with the interests of our private and public employers. Small businesses are exempt from the Act and key employers are excluded from its coverage if their absence will cause financial harm to their employer. In sum, it is right for families and it is right for business.

President Clinton said that there is nothing wrong with America that cannot be cured with what is right with America. Our "family values" are something right about America. But there is something wrong with America if we support family values, but fail to support the family. The Family and Medical Leave Act of 1993 supports family values because it allows working family members to support what is most important in their lives without fear of losing their jobs.

For this reason, I join with my colleagues' call for expedited consideration of this unfinished work. I look forward to the testimony the subcommittee will receive today and I am especially interested in hearing from our new Secretary of Labor, Robert Reich.

STATEMENT OF HON. DONALD M. PAYNE, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW JERSEY

Mr. Chairman, let me commend you for calling this hearing on the Family and Medical Leave Act. Once again we are here to discuss this issue of vital importance

to the American workforce however, this time, I am pleased to say that we have a new President in the White House who supports this crucial legislation.

Without the passage of this legislation the majority of Americans risk losing their jobs if they are forced to take leave to care for a new or ill child, for their parents or even for themselves. This measure would provide some basic relief for these families.

I am truly looking forward to working with a new administration that is willing to adopt policies that support families, especially during their time of crisis.

Also, I would like to welcome the witnesses here today and give a special welcome to the new Secretary of Labor, Mr. Robert Reich. I look forward to hearing your testimony.

STATEMENT OF HON. ELIOT L. ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW YORK

Mr. Chairman, I would sincerely like to thank you and the subcommittee for holding these hearings on the Family and Medical Leave Act. For many of us, it has been a long and arduous struggle to assure that this issue stays at the forefront of our national policy agenda.

Clearly, our perseverance has finally paid off and with the assistance of a President who is truly an advocate for the American family, we can enact a Family and Medical Leave Act that is equitable, sensitive to the needs of our families, and reflective of sound business practices.

Over the past few years, it has become increasingly clear that American workers require Federal assistance in bringing about much needed changes within their workplace environment. Long accepted employment practices have not changed with the times. With increases in the numbers of two-income families and single, working parents, it is becoming incredibly difficult for working individuals to meet the needs of many family responsibilities, not to mention family crises. Placing workers in a situation where they must choose between their job versus their family is an archaic policy. Unfortunately, today all too many workers are placed in this unreasonable predicament.

As a result, I have made it a personal as well as professional goal to see family and medical leave legislation enacted. I believe that H.R. 1 will prove to be an equitable and sound family and medical leave law.

Thank you for your time and I look forward to hearing today's witnesses' testimony.

STATEMENT OF HON. RON KLINK, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

Thank you Mr. Chairman. As an original cosponsor of H.R. 1, I want to thank you for holding this hearing and moving this legislation in such a timely manner.

I am also pleased that Labor Secretary Reich is able to join us today. I know that he has given a lot of thought to the relationship between employer and employee and between employee and the global economy. I look forward to his testimony on the Family and Medical Leave Act and his future visits to this committee.

I strongly support the Family and Medical Leave Act. I believe that my perspective on this bill may be somewhat unique because I am both a union member and a business owner.

As a member of the American Federation of TV and Radio Artists, AFL-CIO, and part-owner of a restaurant in Pittsburgh, I have seen the changes in the American workplace that make this bill necessary from both sides.

I know what it is like to feel the need for time off from work to care for a sick relative. And I also know that an employee is a better worker when he or she is able to keep their mind on the job, not on some problem at home.

The American family has changed dramatically. The days of the single breadwinner at work and another parent at home are gone. So many families have both parents working now, and there is little flexibility for emergencies at home. For single parents, there is none.

The Family and Medical Leave Act will help provide flexibility for working families. They will no longer be forced to choose between their jobs and their loved ones, or fear the loss of their jobs because of illness.

That kind of peace of mind can only make for better employees. That is why I am convinced that H.R. 1 will be as good for employers as it will be for employees.

I know that we will move this legislation quickly through this committee. I hope that it moves as quickly through the full House and the Senate, so that President Clinton can sign it into law.

STATEMENT OF HON. HARRIS W. FAWELL, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF ILLINOIS

Good morning, Mr. Chairman, fellow subcommittee and committee members, Secretary Reich, and other guests. My statement this morning as we consider the Family and Medical Leave Act of 1993 will be brief and to the point.

As you know, this issue has been debated in this committee for the past several years. Unfortunately, the debate had been consistently misconceived as a contest between those who support unpaid medical leave and those who do not. This is untrue. I am not opposed to employers granting unpaid leave to employees for family and medical purposes and I'd venture to say that most of the other members I know who oppose this legislation are also not opposed to the concept of unpaid leave.

Rather, what I oppose is the notion that a national personnel leave plan can be mass produced in Congress for all of America's diversified employers and employees, public and private, in a way which is actually beneficial to them and to the country. A "one-size-fits-all" requirement such as the one in this legislation ignores the diversity of America's workforce and infringes on the ability of employers and employees to negotiate the types of benefit packages that are best suited to their particular needs.

Contrary to the way this issue has sometimes been portrayed not all employees put unpaid leave at the top of their employment benefits wish list. Some would rather have their benefits package include different leave options such as a flex-leave policy, a four-day work week, home work, etc. Still others aren't as concerned about leave and would rather have the benefits targeted at things such as education, extended vacations, child care, legal aid, and many more. Congress certainly doesn't know which of the many employee benefit options are best or most desired by employees or which ones best serve the missions of certain public or private entities. Yet if Congress mandates unpaid leave, we must realize that we will be correspondingly limiting other employee benefit options.

Finally, Mr. Chairman, Congress must recognize that a federally-mandated leave policy would ultimately harm the very people its sponsors claim it would help. Single-worker families, particularly female-headed households, and low-income workers are least able to afford three months off in one year without pay. Thus, according to a study by the Joint Economic Committee, "low-income workers will stay on the job and be forced to work longer and harder to compensate for lost productivity due to higher paid co-workers taking leave."

I urge this committee to think very carefully about imposing this mandate on America's workers and employers. I look forward to this morning's testimony. Thank you, Mr. Chairman.

JOHN BOETTNER —

1

OPENING STATEMENT, HEARING ON H.R. 1, THE FAMILY AND MEDICAL LEAVE ACT

MR. CHAIRMAN, THERE ARE BOTH PHILOSOPHICAL AND PRACTICAL REASONS TO OPPOSE THIS BILL. BUT I DO NOT WANT TO SUGGEST THAT THIS LEGISLATION IS NOT ADDRESSING A REAL PROBLEM. WORKING PARENTS ARE EXPERIENCING DIFFICULTIES BALANCING TIME CONSTRAINTS BETWEEN FAMILY AND WORK. THE QUESTION MEMBERS OF CONGRESS HAVE TO FACE IS WHAT OUR RESPONSE TO THIS PROBLEM SHOULD BE. FRANKLY, H.R. 1 IS THE WRONG WAY TO DEAL WITH THIS SITUATION, AND ULTIMATELY WILL BE PROVEN A FAILURE IN ITS APPLICATION.

SUPPORTERS OF MANDATED LEAVE DESCRIBE THIS BILL IN TERMS OF "CARING" AND "NURTURING," WHICH MAKES IT SEEM LIKE THOSE OF US OPPOSED TO H.R. 1 REALLY DON'T CARE. FOR THE RECORD MR. CHAIRMAN, I AM NOT OPPOSED TO COMPANIES PROVIDING LEAVE FOR THEIR EMPLOYEES. NOR ARE AMERICA'S EMPLOYERS -- AFTER ALL, THE BOSS ALSO HAS A FAMILY. ALMOST EVERY COMPANY IN AMERICA WILL MAKE ARRANGEMENTS TO HELP PEOPLE DEAL WITH PERSONAL OR FAMILY EMERGENCIES. FURTHERMORE, SMART EMPLOYERS UNDERSTAND THAT LEAVE BENEFITS HELP ATTRACT AND RETAIN TALENTED WORKERS.

THEN WHY DO I OPPOSE H.R. 1? BECAUSE CONGRESS SHOULD NOT MANDATE TO ALL COMPANIES AND ALL WORKERS THEIR BENEFITS. 535 MEMBERS OF CONGRESS CANNOT ADEQUATELY DETERMINE EMPLOYEE LEAVE POLICIES AND CONDITIONS FOR TAKING SUCH LEAVE. WE SIMPLY CANNOT WRITE A BILL THAT TAKES INTO ACCOUNT ALL OF THE VARIOUS SITUATIONS WHERE AN EMPLOYEE MIGHT NEED TIME OFF. NOR CAN WE ANTICIPATE HOW AN EMPLOYER NEEDS TO REACT TO SUCH REQUESTS. EMPLOYERS AND EMPLOYEES, THROUGH PRIVATE NEGOTIATIONS, ARE FAR BETTER ABLE TO DETERMINE WHAT THEIR OWN LEAVE POLICIES SHOULD BE. BOTH SIDES MUST HAVE THE FLEXIBILITY TO DETERMINE WHAT CONDITIONS BEST MEET THE NEEDS OF BOTH WORKERS AND THEIR EMPLOYERS. H.R. 1 DESTROYS THIS FLEXIBILITY BY DICTATING THE CONDITIONS UNDER WHICH LEAVE CAN BE TAKEN.

PROPOSERS OF H.R. 1 GIVE SEVERAL REASONS WHY CONGRESS SHOULD PASS THIS LEGISLATION. THE FIRST REASON GIVEN IS THAT THE AMERICAN PUBLIC IS DEMANDING THIS BENEFIT SO WORKERS, PARTICULARLY WORKING WOMEN, CAN MORE EASILY MEET THE DEMANDS OF FAMILY AND THE WORKPLACE. THIS CLAIM IS NOT BACKED UP BY PUBLIC POLLING NUMBERS -- WHICH INDICATE THAT THERE IS NO GRASS ROOT SUPPORT FOR THIS ISSUE.

IN A 1989 WASHINGTON POST POLL, PEOPLE WERE GIVEN A CHOICE BETWEEN FOUR ISSUES, INCLUDING PARENTAL LEAVE, AND ASKED TO CHOOSE WHICH ONE WAS MOST IMPORTANT. PARENTAL LEAVE CAME IN LAST. A 1989 HARRIS POLL REVEALED THAT 74% OF EMPLOYEES SURVEYED FELT THEIR EMPLOYERS MADE ADEQUATE PROVISIONS FOR "REGULAR AND EMERGENCY NEEDS OF WORKING PARENTS." IN EVERY OPEN-ENDED POLL TAKEN BY THE NEW YORK TIMES SINCE 1981 PARENTAL LEAVE HAS NEVER BEEN MENTIONED AS A TOP PRIORITY FACING THE COUNTRY. FINALLY, A GALLOP POLL FOUND THAT ONLY 1% OF EMPLOYEES NAMED PARENTAL LEAVE TO BE THEIR MOST VALUABLE BENEFIT.

A SECOND REASON GIVEN FOR PASSING THIS BILL IS THAT BUSINESS ARE NOT ADDRESSING THE ISSUE OF FAMILY AND WORK VOLUNTARILY. ONCE AGAIN, SURVEYS OF THE WORKPLACE REVEAL A DIFFERENT STORY.

A 1991 SURVEY BY THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS FOUND THAT 93% OF SMALL COMPANIES HAVE AN INFORMAL LEAVE POLICY. IN A SURVEY OF COMPANIES THAT OFFER LEAVE 79% SAID THEY OFFERED LEAVE BECAUSE THEY RECOGNIZED THE NEED. ONLY 15% OFFERED LEAVE BECAUSE A STATE MANDATED IT.

WHAT IS DRIVING COMPANIES TO PROVIDE EXPANDED LEAVE TO THEIR EMPLOYEES? DEMOGRAPHICS. ACCORDING TO THE U.S. DEPARTMENT OF LABOR "WORKFORCE 2000" STUDY, OVER 60 PERCENT OF NEW ENTRANTS INTO THE LABOR FORCE WILL BE WOMEN. THE ENTRANCE OF WOMEN IN THE WORKFORCE WILL COINCIDE WITH FEWER YOUNGER WORKERS ENTERING THE LABOR MARKET. THE COMBINATION OF THESE TWO DEMOGRAPHIC TRENDS WILL FORCE COMPANIES TO BE MORE SENSITIVE TO THE NEEDS OF WORKING WOMEN, AND DEVELOP POLICIES TO REFLECT THESE NEEDS.

A THIRD REASON GIVEN FOR PASSING THIS BILL IS THAT DIFFERENT STATE LAWS REQUIRES MINIMUM FEDERAL SOLUTION AND PROTECTION FOR ALL WORKERS. CAREFUL ANALYSIS OF STATE PARENTAL LEAVE STATUTES SHOW THAT H.R. 1 IN NO WAY REPRESENT A BASIC NATIONAL MINIMUM STANDARD. IT IS FAR MORE EXPANSIVE THAN ANY OTHER STATE LEAVE LAW.

A STUDY OF THE 22 STATES, THE DISTRICT OF COLUMBIA, AND PUERTO RICO, THAT MANDATE LEAVE REVEALED THE FOLLOWING:

- EIGHT STATES: PROVIDE ONLY MATERNITY DISABILITY LEAVE FOR WOMEN
- ANOTHER EIGHT STATES ONLY PROVIDE LEAVE FOR NEW PARENTS AND FAMILY CARE
- THE STATE OF KENTUCKY ONLY PROVIDES LEAVE FOR NEW PARENTS OF ADOPTED CHILDREN
- OREGON GIVES 12 WEEKS OF LEAVE FOR NEW PARENTS, WITH ADDITIONAL MATERNITY DISABILITY.
- SOUTH CAROLINA GIVES ONLY 5 DAYS FOR FAMILY CARE PER YEAR

RATHER THAN A "MINIMUM STANDARD," H.R. 1 PROVIDES MORE BENEFITS THAN EVERY OTHER STATE.

SUPPORTS OF THIS BILL DISCUSS IT IN TERMS OF A "BASIC MINIMUM LABOR STANDARD." MR. CHAIRMAN, THIS IS NOT A LABOR STANDARDS ISSUE. PARENTAL AND MEDICAL LEAVE GREATLY DIFFER FROM OTHER LABOR STANDARDS ISSUES LIKE THE MINIMUM WAGE OR CHILD LABOR LAW.

TIME OFF IS A BENEFIT, JUST AS HEALTH INSURANCE OR VACATION: IT DOES NOT MAKE THE LABOR MARKETS WORK MORE EFFICIENTLY, OR PROMOTE HIGHER WAGES. LABOR STANDARDS PROTECT BASIC WORKERS RIGHTS: THEY SET STANDARDS FOR ALL WORKERS, REGARDLESS OF SALARY OR POSITION. IF H.R. 1 IS A MINIMUM LABOR STANDARD AND A BASIC RIGHT TO BE ENJOYED BY ALL AMERICANS, WHY DOES IT ONLY APPLY TO WORKERS IN LARGE COMPANIES? DON'T WORKERS AT SMALL COMPANIES DESERVE THE SAME BASIC RIGHT?

FINALLY, I WANT TO ADDRESS THE CLAIM THAT ALL OF OUR COMPETITORS PROVIDE LEAVE. THIS IS TRUE, BUT IT IS ALSO COMPARING APPLES AND ORANGES.

THERE ARE SEVERAL ISSUES TO CONSIDER WHEN COMPARING OUR LABOR LAWS WITH EUROPEAN AND JAPANESE LAW. FIRST, THE FLEXIBILITY AND MOBILITY OF LABOR MARKETS IN EUROPE AND JAPAN ARE NOT AS GREAT AS AMERICAN LABOR MARKETS. MORE IMPORTANTLY, THE EUROPEAN WORK RULES CONTRIBUTE GREATLY TO THE HIGHER UNEMPLOYMENT RATES IN EUROPE. IN GERMANY, RIGID LABOR LAWS ARE CONTRIBUTING TO THAT COUNTRY'S ECONOMIC DOWNTURN. ONE OTHER DIFFERENCE SUPPORTERS OF H.R. 1 FAIL TO MENTION IS THAT EMPLOYEE BENEFITS IN EUROPEAN COUNTRIES ARE PAID FOR THROUGH TAXES. SUPPORTERS OF PARENTAL LEAVE ALSO FAIL TO MENTION THAT THE JAPANESE USE THEIR LEAVE LAWS TO FORCE WOMEN OUT OF THE WORKPLACE. OTHER COUNTRIES MAY PROVIDE GENEROUS PAID LEAVE POLICIES FOR THEIR WORKERS, BUT THIS LEAVE DOES NOT COME WITHOUT A PRICE.

MR. CHAIRMAN, BUSINESSES IN THE REAL WORLD MUST STRUGGLE DAILY TO MAINTAIN THEIR CASH FLOW, MEET EXPENSES, SELL PRODUCT AND MAINTAIN CUSTOMERS. THOSE FORTUNATE ENOUGH TO SURVIVE IN THIS EXTREMELY COMPETITIVE MARKETPLACE CAN THEN EXPAND THEIR COMPANY AND HIRE NEW WORKERS. THIS DYNAMIC CREATES ECONOMIC GROWTH AND JOB OPPORTUNITIES FOR OUR CONSTITUENTS. WHEN WE PLACE EMPLOYEE BENEFIT MANDATES ON THE PEOPLE WHO RUN SUCCESSFUL COMPANIES AND CREATE JOBS, WE ARE BURDENING THEM WITH ADDITIONAL COSTS AND DIVERTING THEIR ATTENTION FROM THE REAL TASK AT HAND -- PROMOTING ECONOMIC GROWTH. H.R. 1 HAS NOTHING TO DO WITH PROMOTING ECONOMIC GROWTH OR CREATING JOBS IN THE REAL WORLD. I SUGGEST MY COLLEAGUES ON THE COMMITTEE THINK ABOUT THAT BEFORE THEY VOTE IN SUPPORT OF THIS BILL.

STATEMENT OF HON. JOHN W. OLVER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MASSACHUSETTS

Mr. Chairman:

I was pleased to see the Family and Medical Leave Act receive the priority it deserves in the 103d Congress when it was introduced as H.R. 1. I am grateful for the opportunity to testify before the committee today on this vital piece of legislation.

As a cosponsor and conferee of this bill in the last Congress, I am particularly happy—not only because we are once again launching this much needed policy through the committee process, but also because we have a new President of the United States who understands the needs of American families.

President Clinton's approval of the Family and Medical Leave Act will mark a break with the past and it will promote policies that preserve and protect families.

Families are working hard to survive stagnant incomes, the loss of job security and skyrocketing costs for health care, higher education, and housing. This legislation will remove a giant obstacle to the survival of the American family. It will enable parents to care for their children, and sons and daughters to care for their parents without the fear of losing their jobs.

Allowing parents to spend time with their newborn or their newly adopted child—now THAT is what I call a "head start."

This legislation is also particularly important for this country's senior citizens. Many seniors now live in fear of being unable to care for themselves. Many cannot rely on working relatives for short-term care. This legislation provides an alternative to nursing homes when the need is only for short-term family care.

Long-term care arrangements for the elderly are fragile at best and can easily break down: primary caregivers do get sick; patient health changes; new care arrangements must be made. Family leave gives people the time to provide immediate care and to make alternate arrangements for the long term.

Some members of the business community have expressed opposition to this bill, claiming that it will raise the cost of doing business and will hamper productivity. Yet, compared with family and medical leave laws of our major international competition, the bill provides only modest job security. There are several provisions of the bill which were carefully crafted to address the concerns of business. The bill excludes the smallest of businesses, restricts the applicability to employees who have worked less than a year, requires notice if possible for planned medical treatment, and places limitations on the definition of serious health conditions. The bill even allows employers to recover the cost of health insurance premiums paid for employees who do not return to work from a period of leave.

I look forward to the passage of this bill and, this time, to President Clinton's signing of this lifeline to the American family.

Chairman WILLIAMS. Again, Mr. Secretary, we want to congratulate you on behalf of each member of this subcommittee and, I think, the full committee as well, congratulate you and congratulate the President on his choice of you as Secretary of Labor. We look forward to hearing your testimony this morning. Please proceed.

STATEMENT OF HON. ROBERT B. REICH, SECRETARY OF LABOR

Secretary REICH. Thank you, Mr. Chairman, members of the committee.

For time's sake, with your permission, I will simply submit my formal testimony and talk about why I am here and why the President and I are so enthusiastic about this bill and urge its passage.

I'm here on the second morning of my stay at the Labor Department, my being Secretary of Labor. Why am I here so early, and why am I here on the second full morning? Because this is an important piece of legislation. You have been talking about this legislation, having hearings on this legislation, for many, many years. The American public wants it enacted, the President wants it enacted, and it is time.

Why is this so important? There are two overarching reasons, it seems to me. One has to do with the minimal standards of decency with regard to a workforce that is very different from a workforce we used to have 10, or 20, or 30 years ago. The workforce of 10, or 20, or 30 years ago did not have as many single parents, didn't have as many couples who were both working in that workforce. Right now, we have a huge number of children and elderly who are dependent entirely upon people who are away during the day at work, whether it is a single parent or, again, two parents who are at work, and to ask those workers to choose between their family or their jobs is simply unfair.

A minimal standard of fairness, a minimal standard of decency with regard to the evolving workforce requires that workers have at least unpaid medical/family leave of the sort that is contained in this bill. They want to know that their jobs are there, that a job comparable to the job they had is there when they go back.

This committee, Congress in general, presidents over the past many presidents have established minimal standards of decency to the workforce. Right now, given the changes in the family, this is another step in that direction.

But I want to emphasize a second reason, over-arching reason, why this is terribly important legislation, and it has to do with the future of the American workforce. It has to do with the future of American competitiveness. Our companies are not going to be competitive, they are not going to generate high profits and high value, unless they have the true commitments of their workers, unless there is a durable relationship between worker and company.

The only way you get that commitment and that loyalty, the only way workers are willing to go the extra mile is if they know that if there is a family or medical emergency they can get their jobs back. If they suspect that they can't, if they know that they can't, then workers, front-line workers, in America are not going to go that extra mile, they are not going to be committed. It is that relationship between management and labor that is so critical to future competitiveness on which this bill is premised.

You know, a lot of companies do offer family and medical leave. In fact, the best companies in this country do already offer family and medical leave. Last night, I had dinner with some chief executive officers of the most progressive companies in this country and some labor leaders. We were talking about it. They said, "Look, this is obvious. This is directly related to our profitability." Unfortunately, not all companies are yet there. If they were all there, if they were all that responsible, if they were all that enlightened about their future, we wouldn't have to worry about this legislation, but they are not all there.

Some companies, in fact, can spoil it for other companies. Even enlightened companies have to suffer when there are irresponsible companies that are not offering family and medical leave because it changes the climate of labor and management relations. A worker who can't get the job back because he or she had to go and attend to a sick child or relative, well, that worker tells another worker, who tells another worker, and before you know it, in the entire workplace a lot of companies are faced with a less trustful, less trusting workforce.

Or take even companies that not have enlightened managers. Those workers may not be willing to trust that there is always going to be enlightened management at that company. You know, there are takeovers, there are changes in management. That enlightened management may need to have legislation like this in order to ensure that those employees know that in the future, regardless of management, they can get that family and medical leave.

There are obviously other reasons, but I went back through the testimony, through a lot of the evidence that you have taken over the years, and I was impressed by how many business leaders felt that this was so important to the bottom line. America pays in another way when we don't have family and medical leave, and, again, the testimony is filled with this kind of evidence, these kinds of testimonials, and that is that when workers have to choose between family and jobs we pay as Americans in the form either of more welfare and unemployment insurance and other kinds of social safety net expenses because they have left their jobs, or we pay if they stay on their jobs because the problems that are neglected at home get worse, mount up, and that causes even more medical expenses and more welfare expenses down the road.

Finally, Mr. Chairman and members of this committee, let me draw your attention to something that you already are aware of, I'm sure, something that is very concerning to me, and that is, we are developing a two-tiered workforce in this country. Top management, top professional workers, they already have—they can take time off for family and medical leave.

The problem is that you have an increasing number of workers, the bottom 70 or 80 percent without college educations, who don't have the benefits of family and medical leave. Not only are their wages and benefits declining generally, not only are their workforce safety and health environments declining in many ways, but they don't have some basic protections. That two-tiered workforce is dangerous for this country in many ways, and I suspect that we will have a chance to talk about this, and I hope we will have a chance to talk about this in the future.

Thus, in the name of decency and also in the name of American competitiveness, it is time we joined every other major industrial country to provide family and medical leave. This Act should have become the law of the land long ago, Mr. Chairman. You and many other members of the committee and many of your colleagues in the House and Senate have worked for years to make this a reality.

I know, Mr. Clay, you have been very, very actively involved. Others have been actively involved. I have followed it over the years. Countless Americans have fought for it. There has been too much needless pain and anxiety. The American workforce has waited for this protection. President Clinton is eager to sign this legislation into law.

As you know, H.R. 1 differs in some minor technical ways from the Senate bill in respect to treatment of reduced and intermittent leave. The Senate bill also clarifies that when an employee who is exempt from the Fair Labor Standards Act overtime provision takes leave to which the employee is entitled under this bill, it has

no effect on the employee's exempt status. The administration supports that clarification. I urge you to adopt the Senate provision.

Let me just finally say that I can come up with only one benefit for having waited so long. This way, the passage of the Family and Medical Leave Act will signal not only a turning point in the history of American workforce policy but as an emphatic opening statement of the Clinton administration's workforce agenda with regard to minimal standards of decency but also, importantly, with regard to competitiveness, utilizing workers as assets rather than as costs of doing business. President Clinton is waiting; the American workforce is waiting; I'm waiting.

Thank you.

[The prepared statement of Secretary Reich follows:]

STATEMENT OF HON. ROBERT B. REICH, SECRETARY OF LABOR, WASHINGTON, DC

Mr. Chairman and members of the committee, it is with great pleasure that my first official act as Secretary of Labor is to urge the swift passage of the Family and Medical Leave Act, H.R. 1, on behalf of the new administration. This legislation is the first step—the first of a great many steps—in the Clinton administration's mission to prepare the American workplace, and all of America's workers, to meet the challenge of the global economy.

There are two overarching reasons for this legislation, at this time. The first concerns the needs of the new American workforce. Increasingly, America's children and elderly are completely dependent on people who must spend many hours at the office or the factory. And when a family emergency arises—when those workers must be home to attend to seriously ill children or parents, or to newly-born infants, or even to their own serious illnesses—it is simply unfair to ask those working Americans to choose between their jobs and their families—between continuing their employment or tending to vital needs at home.

A civilized society is also a civilized economy. Even a nation that deeply respects private decisions about the organization of work can, and indeed must, declare some arrangements out of bounds. In 1938, we declared in the Fair Labor Standards Act that it is not acceptable to exploit child labor and took the first step to ensure that a minimum wage would be provided to workers. In 1940, we declared in the Veterans Reemployment Rights Act that it is not acceptable to strip workers of their jobs while they are meeting their military obligations to their country. In 1964, we declared in Title VII of the Civil Rights Act that it is not acceptable to deny Americans membership in the workplace because of their race, gender, or their religion, or their ethnic origins. In 1993 it is time—indeed, it is well past time—for us to declare that it is not acceptable to force American workers to choose between jobs and family.

The second overarching reason for this legislation, at this time, is that it encourages the development of high-performance work organizations. It is only when workers can count on durable links to their workplace that they are able to make their *own* full commitments to their jobs. The record of hearings on family and medical leave is full of testimonials from some of America's most respected business leaders on the powerful productive advantages of stable workplace relationships, and on the comparatively tiny costs of guaranteeing that those relationships won't be dissolved while workers attend to pressing family obligations or their own convalescence. The assurance that the job will still be there after a worker has returned home after major surgery, the sick child has recovered, or the new baby has been welcomed into the family, fosters a workplace atmosphere of cooperative learning, flexibility, and continuous improvement. *Keeping workers is good for business.*

I applaud the many, many companies who already do right by their people when circumstances require a period of leave—applaud both their decency, and their good business judgment. And I will assure America's responsible business leaders that the Clinton administration, and the Department of Labor, have no intention of dictating the details of workplace relationships. There are many valid ways to structure a productive working environment.

Even so, family and medical leave is not an issue that can be left for each separate business to work out on its own. There is a role for government to play in a partnership for transforming the American workforce. Government plays its part by celebrating and supporting responsible employers who are setting a new standard

for the workplace and the workforce of the future; by sending clear signals to guide the uncertain; and by putting the brakes on the minority of cynical or shortsighted business executives who refuse to recognize the legitimate needs of America's working men and women.

Companies that fail to recognize the productive power of long-term ties to the workplace don't just damage their own reputations. They also undercut the efforts of more far-seeing firms to establish a culture of commitment and trust. A video-company sales manager in New Hampshire is fired after spending 10 days at the bedside of his desperately sick baby, and his counterparts at other companies feel a little less willing to put in that crucial extra effort, a little less confident that loyalty will be paid back in kind. In Louisiana, a department store clerk's request for six weeks' unpaid leave to bond with a newly adopted child is denied, and she is forced to resign. Her story is told at bus stops and cafeteria tables, and workers who hear it become a little more skeptical about their own employers' promises of commitment. A medical technician in Georgia loses her job when she needs a month of leave to take care of her dying father. Word gets around, and workers at other companies become a little more cynical, a little less trusting, a little less willing to go the extra mile in their own workplaces.

Even responsible corporations sometimes become less responsible through management shakeups or corporate takeovers, betraying their workers' trust. Without the assurance that this Act will provide, workers may not be willing to put in the extra mile even for enlightened managers who promise that jobs will be there when workers return from family emergencies, out of fear that new managers may come along who refuse to live up to the promise.

Indeed, without a partnership with government to ensure that all companies do right by their workers, even some of the best American companies might feel reluctant to take the lead themselves. Without a uniform requirement to welcome workers back to their jobs, companies that otherwise would be willing to offer family and medical leave might worry that doing so would attract disproportionate numbers of workers who are especially likely to need such leave. Having a few workers on leave is a small burden which more than pays for itself in loyalty and teamwork, but having a large number because none of your competitors makes the same promise could be burdensome.

We can't let a few bad apples poison the atmosphere for all American companies. The Family and Medical Leave Act will provide reassurance, and reinforce the efforts of companies which are truly dedicated to making their employees their principal assets.

There's another way we all bear the costs when workers are forced to choose between keeping their jobs and meeting their personal and family obligations. When they sacrifice their jobs, we all have to pay more for unemployment compensation, retraining, and the rest of the essential but costly safety net we maintain for Americans shaken loose from the productive system. When they ignore their own health needs or their family obligations in order to keep their jobs, we all have to pay more for social services and medical care as neglected problems worsen.

Government must take a hand to extend the ethic of long-term workplace relationships beyond the better-educated, better-paid segment of the workforce where high-performance teamwork has already begun to take root, and where family and medical leave is relatively common. President Clinton and I are committed to curtailing our country's drift toward a two-track economy, where some American workers are treated as valued partners and others as disposable parts. As we move toward the economy of the future, we have to make sure we bring everybody along. The Family and Medical Leave Act will serve as a strong signal that *all* workers, not just the top tier, must be tied into ongoing networks of cooperative learning and teamwork.

Thus, in the name of decency, *and* in the name of America's economic competitiveness, it is high time we joined all other major industrialized nations to enable our workers to take family and medical leave. This Act should have become the law of the land a long time ago. Mr. Chairman, you and many of the other members of this committee, and many of your colleagues in the House of Representatives and the Senate, have worked for years to make this a reality. Countless Americans have fought for it. There has been too much needless pain and anxiety while the American workforce waited for the protection this Act promises. President Clinton is eager to sign this legislation into law.

As you know, H.R. 1 differs in several minor ways from the Senate bill, most importantly with respect to the treatment of reduced and intermittent leave. My staff worked closely with your staff and the Senate staff in drafting these changes, in a way that has not been possible in recent years. The result is new language in sec-

tions 101 and 102 that better effectuates your intent to entitle employees to leave on a flexible schedule when leave is medically necessary.

In a related amendment, the Senate bill clarifies that when an employee who is exempt from the Fair Labor Standards Act's overtime provisions takes leave to which the employee is entitled under this bill, it has no effect on the employee's exempt status. The Department of Labor supports that clarification, and I urge you to adopt the Senate provision.

Let us seize one benefit, at least, from the long delay. This way, the passage of the Family and Medical Leave Act will signal a turning point in the history of American workforce policy. It will serve as the emphatic opening statement of the Clinton administration's workforce agenda. President Clinton is waiting, and the American workforce is waiting.

Chairman WILLIAMS. Thank you very much, Mr. Secretary.

I have seen the importance of this bill not only because of the protection that it would provide for individual American workers, but I also see its importance as an integral part of health care reform. This is one of the pieces of the universal access, arm of health care reform. This is the piece that legally makes certain that sick individuals fired from their jobs—who would otherwise be fired from their jobs and lose what health care coverage they have do not experience that unfortunate circumstance.

Mr. Secretary, let me ask you just to comment on this as a piece of the entire universe of health care reform.

Secretary REICH. Health care reform affects American workers in many, many ways, Mr. Chairman; you are absolutely right. At this moment, the new administration, the Clinton administration, is fashioning its health care policies. I, as Secretary of Labor, am on that committee dealing with those new health care ideas. We are eager to work with Congress, and that is very, very high on the agenda of the Clinton administration.

Chairman WILLIAMS. Thank you.

The chair advises the members that, because we have a good many members, more than are on our subcommittee, and we want to hear from everyone, we will be enforcing the five-minute rule for everyone. So we ask each of you to act accordingly.

Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for your presentation. I particularly note your emphasis on, although I don't think you said it was a minimum labor standard, you did note that enlightened companies have already moved to this and that this is something in the long tradition of American labor law.

You alluded to the question of American global competitiveness, and, as we all know, you have spent a great deal of time on this subject and are a professional in this area. I wonder if you could amplify on your observations and how you personally would directly respond to those in the business community who have claimed that this bill will actually hurt competitiveness, in light of the fact that you have already acknowledged that we will now be coming up to the standards of the rest of the industrialized world. How do you respond to those business people?

Secretary REICH. Well, there are two points, Congresswoman. One point, obviously—in fact, you have just made it for me—that this bill simply brings us up to the standards of the rest of the industrialized world.

Competitors whose productivity has increased at a faster pace than ours, whose competitiveness some would say is greater than ours, have provided family and medical leave and have had this kind of legislation for years, and it has not impaired their competitiveness. In fact, I think the argument is just exactly the opposite; these kinds of provisions help competitiveness. And I want to stress this point because the trusting relationship between management and labor is absolutely critical. Continuity between labor at one point in time and labor at another point in time is absolutely critical. Workers need to know that they can get the jobs back before you can get their commitment.

We need a worker-management relationship in this country that is based on mutual trust. We can't get that unless workers feel that, if they have a family emergency, they can get their jobs back.

One final point. We have in the American industrial system two kinds of companies right now. One kind of company looks at its workers as costs of doing business and sees its future and its competitive strategy based upon reducing those costs. The second kind of company looks at its workers, particularly its front-line workers, as assets to be developed, not costs to be reduced. It is the second kind of company that over the long term is gaining market share, over the long term is more profitable and more productive. This bill helps all companies move in the direction of the second category.

Mrs. ROUKEMA. I don't think we have the analytic data on that, but it would be interesting to construct the most profitable companies in the country and see how that compares using that yardstick.

I hope I have time for this brief one, and if you haven't had an opportunity to develop a response, you will have to develop a response. Mr. Goodling is not here at the moment, but he does raise an interesting point, and that is on the question of substituting this as an option in cafeteria style plans. How would you respond to that? Is that a feasible option as a choice within this legislation, or is it simply not workable?

Secretary REICH. Well, obviously I would want to examine it more closely with regard to all options beyond this legislation. We are committed to this legislation. President Clinton wants this legislation. We are not going to reexamine this legislation.

But let me just say on that, my investigation both with regard to interviews I have done over the years, consulting I have done, discussions with chief executives, but also investigating all the testimony, that unless workers know that this is available—it is not a matter of option—unless they know that they can come back to their job or get a job that is comparable, they are less trusting, they are less committed, they simply don't have that same sense of connection to that company.

Mrs. ROUKEMA. Well, if you have any further thoughts, I would appreciate your communicating with this committee, not in terms of this particular markup, although we will be considering it, but as to future steps that we might take.

Secretary REICH. I would happy to, Congresswoman.

Mrs. ROUKEMA. Because it is a legitimate question for discussion. Thank you, Mr. Chairman.

Chairman WILLIAMS. Thank you.

Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Secretary, in your dealings with companies who have family and medical leave policies, have you witnessed any of the consequences that the opposition speaks of such as unnecessarily or unreasonably increased costs and difficulty in replacing workers during the time of leave?

Secretary REICH. To the contrary, Congressman.

First of all, as you know, the General Accounting Office did a study to estimate what the costs might be. They found just a little bit over five dollars per year per worker, an almost negligible sum when you compare it particularly to the benefits that I have been stressing, the benefits of enhanced loyalty and commitment.

The companies that I have talked with—in fact, just last night several of these chief executive officers said they need family and medical leave. They have this automatically in their employee plans for all their employee, not just their top employees. They need it for the very reasons that we have been talking about.

Mr. CLAY. Thank you.

Thank you, Mr. Chairman.

Chairman WILLIAMS. Mr. Gunderson.

Mr. GUNDERSON. Thank you very much, Mr. Chairman, and let me join everyone else in officially welcoming you, Mr. Secretary.

I come from Wisconsin, which has had a State family and medical leave policy in effect for some years. We worked out some of those things. But it brings into mind the first question I would like to ask you, because you have been one of the intellectuals—and I mean that in the most positive sense—on the whole issue of workforce policy in this country.

My question, however, is, why 12 weeks? From an intellectual perspective and from a workforce policy perspective, I'm not objecting at all to the concept that we ought to protect people's jobs when we are dealing with maternity leave, perhaps a serious family illness, et cetera. But my question is, why are we going to supersede literally every one of the 31 States that have developed some policy on this? There has got to be a rational reason for jumping over those six weeks, those eight weeks, that States have in saying it has got to be 12 or nothing. Can you enlighten me on that?

Secretary REICH. Well, three months—again, according to the evidence I have seen, some of the evidence that has been gathered by this committee over the years, and also my discussions, three months seems to be—and we are talking about up to three months, up to 12 weeks—that seems to be a good minimal outside amount of time with regard to family emergencies and medical leave. It might be more. I think that in some sense some of the groups I have talked with and some of the working groups I have talked with say to me that perhaps it should be 14 or 16 weeks. But it seems to me—again, looking at the record, based upon the discussions I have had, that 12 is a good accommodation of what that outside protection ought to be.

Mr. GUNDERSON. It would be helpful—and I mean this in the most positive sense—if you or your Department could share with

us some kind of experience of what is happening nationwide and, frankly, worldwide on the three categories we are going to cover here. We are covering maternity leave, we are covering family leave, and we are covering personal medical leave, and I think we need to discuss each of those categories in terms of where, why, and how much should the Federal Government preempt States, and what is the rationale for that. If someone could share that with us—obviously not before markup tomorrow—it would be most helpful to us.

The second question I have—and this may not be anything that you have determined at the Department—but as I read the implementation of this bill, the bill goes into effect in six months for everyone except those who have collective bargaining agreements, and for them it goes into effect in 12 months. Why the difference? Why wouldn't it go into effect in six months for everybody regardless if we are going to preempt, or why not 12 months for everybody? Why the difference?

Secretary REICH. I don't know the answer to that, and I am sure there are people on this committee who do know the answer, and maybe you can enlighten me as well.

Mr. OWENS. Would the gentleman yield?

Mr. GUNDERSON. Yes.

Mr. OWENS. They are not getting paid, so why should they stay out longer than necessary? People are not getting paid, so why are you worried about the length of time?

Mr. GUNDERSON. I'm not worried about the length of time. I am just asking about the inconsistency. Why would we have the bill go into effect within six months where there isn't a collective bargaining agreement but where there is a collective bargaining agreement we say it goes into effect in 12 months? I don't understand the rationale.

I am not taking a side; I am just trying to literally find out why the difference.

Mr. OWENS. Oh, I misunderstood. I thought the gentleman was still on his question of why the leave is three months versus eight weeks or six weeks. I'm sorry.

Secretary REICH. Excuse me, Congressman. It may be that there is a need to renegotiate existing contracts, and perhaps the logic behind that had to do with simply the lead time with regard to renegotiating existing contracts.

Mr. GUNDERSON. What the bill says, Mr. Secretary, is that for a collective bargaining agreement it shall go into effect when the new agreement is reached, if that is first, or 12 months, if that is first. So my question is, we are going to preempt existing policies 12 months after the law takes effect in cases where collective bargaining agreements are in place, but only six months after the law takes effect in all other cases, why? I am not taking one side or the other, but it seems to me that we ought to be consistent.

Mr. MURPHY. If the gentleman would yield, I think perhaps one of the main reasons is to allow the bargainners to then address. They may already have that in their collective bargaining agreement in some manner and I think it is to allow the bargainners on both sides an opportunity to address it within that year and not

push them to a six-month limitation, as we would if there were no bargaining agreements in existence.

Mr. FORD. Will the gentleman yield to me?

Chairman WILLIAMS. The gentleman's time has expired. Let me yield time now to Chairman Ford.

Mr. FORD. Mr. Chairman, there are two questions asked: one, why 12 weeks and not a longer or shorter time? We started out in the other committee that I chaired, the Post Office and Civil Service Committee, with Mr. Clay and Mrs. Schroeder and I pushing a bill that was 26 weeks. We picked that time when we did it because that was consistent with what all our trading partners in the Free World do. It was still less than Canada, less than Germany, and less than other major trading partners.

But over the years of dealing with this bill, one of the reasons that people used to attack the bill most often was, how do you justify 26 weeks to have a baby? how do you justify 26 weeks to adopt a baby? how do you justify 26 weeks? and we went from one kind of medical emergency to another, and it became a central part of the opposition to the concept of the legislation, and over the years that number was compromised down not because 12 weeks made any more sense to the original sponsors of this legislation than 26, because we could get more people to vote for 12 weeks than we could for 26, including members of this committee who didn't support the bill at the very beginning but began to support the bill after we modified the number of weeks involved. I still don't think it is important enough to hold up this legislation, and once it is on the books we will find out whether it works.

Now the collective bargaining agreements. The gentleman is not reading the language on page 53 of the bill clearly, I'm afraid. It says, "Collective bargaining agreements. In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph one, title I shall apply on the earlier of the termination date of such agreement or the date that occurs 12 months after the date of enactment of this Act."

In other words, if you already have a collective bargaining agreement that provides family and medical leave, you have up to 12 months to change the terms of that agreement to comply with this law. It does not say that, if your agreement is less generous in some way, that the agreement is thrown out.

We attempted with that language to avoid the constitutional problem of impairing contracts. There are existing contracts between employers and employees. We attempted not to impair that existing contract but said that existing contract can't go on forever, so we said, "If you have got a contract that is expiring in three, or six, or nine months, that is when this set of requirements becomes effective to your workplace. If you have a contract that runs beyond a year after the date of enactment of this Act, sorry, we're going to impair the contract to the extent of giving you that much time to renegotiate it and get a contract in place that does meet the law."

It was an accommodation asked for by employers as well as employees and those businesses and industries that have a long tradition of collective bargaining agreements that cover the very same rights for employees that this Act will spread in a broader way to

nonunionized people who do not have the protection of collective bargaining agreements.

So there is no ominous preference given in any way at all to one type of employer over another. There is a concession made to the fact that there is an existing contract that neither party can simply sit down and change unilaterally; they have got to renegotiate. It may have the effect, as a matter of fact, or reopening the whole collective bargaining agreement that exists between an employment workforce and an employer, and we wanted to be as liberal—or “loose” may be a better term—as we could to permit them to work it out, because collective bargaining is not supposed to be a way to conduct a fight, it is a way to settle the peace.

We look at the National Labor Relations Act as having the same purpose as the U.N.—not to start wars, to end them—and some people look at it the other way, and they see everything that is in the Collective Bargaining Act and legislation of this kind as being coming from one side as sort of an assault upon employers. If you can divorce yourself from that point of view for a moment, you will find the language on the top of page 53 of the bill is reasonable and rational to preserve the existing rights of employers and employees.

Chairman WILLIAMS. Mr. Secretary.

Secretary REICH. Mr. Chairman, if I could clarify one thing, make a general point which may be obvious to everybody on this committee—I’m sure it is—but perhaps to others it is not quite as obvious, and it has to do with amount of time in the bill with regard to leave.

We are talking here about unpaid leave. We are also in an economy in which people are struggling to make ends meet. Two-wage-earner families and single-wage-earner families and single-parent families are the norm. People don’t want to take more time out than they need. In fact, they want to get back to work.

This is not a matter of worrying about workers doing something that they might be getting away with. We are talking about unpaid leave, and we are talking about workers that need that unpaid leave before they get back to work as fast as they possibly can so that they can pick up the next paycheck.

Chairman WILLIAMS. Thank you.

Mr. Fawell.

Mr. FAWELL. Thank you, Mr. Chairman.

Mr. Reich—the pronunciation is “Reick.” Is that correct?

Secretary REICH. “Reish.”

Mr. FAWELL. “Reish.” All right. I have asked several people, and they have said, “Well, it’s either ‘Reick’ or ‘Reich.’” So I’m glad to know.

First of all, I want to commend you for an answer that I have never ever heard, I think, in any committee hearing in which I have ever been, and that is the refreshing answer to Mr. Gunderson’s question when you simply said, “I don’t know.” That encourages me a great deal that one is able to admit that one’s knowledge doesn’t cover everything.

The one question I have is one we can’t complete in five minutes, but I look upon this bill within the context that it is, as Mr. Gunderson implied, a national personnel leave plan mandated upon all

of our public and our private employment entities throughout this Nation with no exceptions—excepting, obviously, those that do not employ more than 50 people.

Within that context, I refer to your comment that an employee should not have to choose between family and a job. That is not fair, and we all lament that, I am sure. But yet within the context I have just mentioned, I see that this bill generally subjects employees to a “one size fits all” mandate—whether we are talking about the Brooklyn Police Department or the Chicago Fire Department or a dress shop in Boston, or the Chicago Cubs for that matter—it is just simply, a mandate from Washington is supposed to fit everybody.

So employees under those circumstances, it seems to me, generically speaking, do have to make a choice. They are basically mandated to make a choice in regard to one particular employee benefit, which is a fine one—unpaid leave or paid leave—and all other employee benefits, such as elder care, child care, early retirement, flex-time, education—all of these benefits do cost something. We would hope, to a great degree, that employers would have the option of cafeteria style choices—a sort of mini-democracy where employees can make that choice and they can pick the benefits that serves the mission of the particular public entity, such as a public school district, for instance.

I see it, too, from the viewpoint of forcing a choice upon the employer. The employer is mandated, as I have indicated, to accept a “one size fits all,” benefit requirement regardless of what his mission may be. You may be running a trauma squad out of a hospital where the people have to show up, and under this bill, which has a loosely defined definition of health care which does not even need a physician to certify to it, people by and large are able to take off on their own discretion—nothing wrong, I guess, innately about that. But if you have personnel that must be there, I question whether or not you mandate a “one size fits all” on everybody in America, even our public entities with their particular nonprofit motive for being.

So I would put that to you. I would cast back to you your argument in saying that it is good that we have a choice, and say that this bill will actually limit employee choice among various benefits. Frankly think that a vast majority of employees have that choice of taking off when there is illness, but there are cases where they do not. But we must look at it from all sides: What Washington, in its wisdom, like an elephant in a china shop, is saying is, “Here is a perfect employee benefit that we mandate.”

How would you answer that?

Secretary REICH. Congressman, I would answer it in two ways. First, as you know, this bill only covers 40 percent of the workforce; 60 percent, those in those small establishments are uncovered; 95 percent of American businesses are not covered by this bill. This is a good step, but it is a very modest step.

Mr. FAWELL. Is it not the first step?

Secretary REICH. Let me say one other point about this with regard to “one size fits all.” In the history of labor law, in the history of protecting workers, Congress has set minimal standards and repeatedly set minimal standards, not a cafeteria plan, not a choice

of this or that with regard to fair labor standards for exploiting children, for allowing veterans to come back and get their jobs, for Title VII of the Civil Rights Act with regard to discrimination. We repeatedly set minimal standards that, really, we view as mandates that are across-the-board mandates.

I want to reassure this committee that the Clinton administration and the Department of Labor have absolutely no intention of dictating the details of workplace relationships. There are many valid ways to structure productive working relationships. But when it comes to something that is as basic as this in terms of a substantial health problem, a medical emergency—and, by the way, the bill does have quite a number of provisions in it, as I read the bill, that would guard against employees simply taking off because they wanted to take off.

When it comes to that kind of a minimal requirement, it seems to me that we do have a responsibility to set those kinds of standards across the board. But I take your point, and I appreciate it and I understand it.

Mr. FAWELL. Thank you. My time has expired.

Chairman WILLIAMS. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

First of all, I would like to welcome Secretary Reich, who formerly worked in my home town of Flint, Michigan, at the time I was first being elected to public office.

It is good to have you here before us this morning.

Mr. Reich, most modern industrial powers have a family and medical leave plan. Are there measurable effects on their economies and on their productivity, and what is the attitude of employers in those countries where they have such a policy?

Secretary REICH. My investigations over the years, Congressman, show that in many—in fact, in all of our chief competitive nations, there is a family leave policy more generous than even the family leave policy that is being considered here, substantially more generous. Mr. Chairman, Congressman Ford alluded to that before.

The attitudes of business and of government to the workforce promote a system of industrial relations in which workers are quite central, the workforce is quite central. This goes back to a fundamental philosophical premise, and if you will kind of excuse me from sounding professorial—

Mr. KILDEE. I majored in philosophy.

Secretary REICH. I was a disc jockey in Flint, Michigan—

Mr. KILDEE. I know—a good one too, by the way.

Secretary REICH. But the Clinton economic plan that was put forward in the campaign is premised on the notion that people—people—investments in people—the economy depends upon people, putting people first. That is our responsibility. That is the economic plan. Every other factor of production—capital, technology, money—moves easily across borders. There is only one factor—production—that is here. That is our people and their training and their education, and also their commitment, their motivation, their loyalty, their sense of involvement in their businesses.

If you don't utilize this resource—if we don't utilize the resource, if we don't businesses to utilize these resources, we are not going to be competitive, and other countries understand this point. Other

countries are developing policies, partnerships between business and government and labor, sometimes kicking some of the recalcitrant businesses along, sometimes holding their hands. But those are absolutely critical aspects of competitiveness, and they understand that.

By the way, I want to correct the record. My assistant tells me that the bill covers 60 percent of the workforce. I said, in error, it was 40 percent of the workforce.

Mr. KILDEE. On that, would you say in those countries that do have such a policy, the policy we are trying to put into place, into law here, that it is at least an aspect of enlightened self-interest on both the government and the employer, that they feel that this will help their productivity, help their competitiveness?

Secretary REICH. Congressman, it is indeed enlightened self-interest. I wish all employers in America understood that it was in their interest. If they did, we wouldn't need this bill. We wouldn't need a lot of things that we now have to protect America's workers and also to treat them as key assets.

But the problem is that, for a variety of reasons, not all American companies do understand this new reality. And, by the way, in the thirties and forties and fifties, you could, through just economies of scale, treat workers as fungible, as cogs in a wheel. You could have huge numbers of workers doing the same thing over and over. You didn't have to have much training. But we are in now the 1990's. We are approaching the year 2000. We are approaching the 21st century. We need a very different structure of management-labor relationships, and we need workers who are committed and motivated and skilled.

Mr. KILDEE. Thank you very much, Mr. Secretary.

Thank you, Mr. Chairman.

Chairman WILLIAMS. Thank you.

We are informed that the Secretary must leave this hearing just prior to noon. There are, if the Chairman's count is correct, more members of the subcommittee alone that we can accommodate under the five-minute-rule. So the Chairman will from here on—although I believe what we have done to date comports with this as well—from here on, we will take members of the subcommittee in the order of seniority. On our side, Mr. Miller just left, so that would be Mr. Owens, Mr. Martinez, and then Mr. Payne, and so on. On this side, it would be Mr. Barrett, Mr. Boehner if he is still here, and then Mr. Ballenger.

We will go now to Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

I will not belabor the point, Mr. Secretary, that I continue to have some problems with the mandated feature of this particular bill. Let me say, I guess, to you that I was particularly interested in your repeated use of the term "American competitiveness," "the future of American competitiveness." I hope that one of the things that you work on is combating the continued growth of the bureaucracy and the paperwork and the red tape that businesses, particularly small businesses must go through.

I am particularly sensitive to this because, as a former small business owner, I had to deal with it over and over and over again. My mind goes back to a town hall meeting that I had in my district

in rural Nebraska, in a little community of 332 people, where a man came to my town hall meeting.

He was a manager of the local agriculture co-op. He handed me a book. It happened to be this book, which he insisted that I take back to Washington. He said that he opened this book every morning when he came to work. This is the book, the regulations, that he had to deal with—he has to deal with every day that he opens his door.

You might ask, is this the accounts receivable book? No. Is it the strategic business plan for that business? No. These are the regulations that this man is forced to live with. He told me that he spends more time complying with regulations, completing the red tape, than he does in running his co-op. And that is not making for a very competitive world, a very competitive business environment, and I feel for people like that, and I hope you know exactly who I am talking about.

So I hope that you will make a real concerted effort to pay some attention to these people that continue to try and make a living, because this certainly negates our ability to forge ahead in this competitive global economy that we continue to talk about.

So I hope that you will see to it, Mr. Secretary, that my constituent does not hand me another one of these books in four years when I return to Washington.

Secretary REICH. Congressman, I certainly will do everything I can.

Again, I want to emphasize that this bill exempts 94 percent of employers, small businesses.

If you will permit me a personal note, my parents owned a small business. Basically, they were the only employees. They worked six days a week, and my father worked seven days over the accounts, occasionally complained about government paperwork. But I'll tell you something: When a flood came along and took his business away—knocked his business out—he came to government, got a small business loan, and it put him back on his feet and saved our family. So he stopped complaining.

Mr. BARRETT. Well, if you will indulge me, Mr. Chairman, one quick question—a yes or no. Would you be willing, because of the nightmare and the patchwork of different State benefit requirements—would you be in favor then of alleviating the employer's administrative burden by allowing the bill to preempt State-mandated leave laws?

Secretary REICH. I like the bill as it is, Congressman. The President likes the bill as it is.

With regard to mandated preemption, with regard to any other changes, I am certainly willing, and I'm sure the administration is willing, to look into other options with regard to future pieces of legislation, but I don't want to open the legislative door here because you have all worked so hard and so long on this, and the President is so enthusiastic about this, that we want to go ahead with it.

Mr. BARRETT. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Chairman WILLIAMS. Mr. Owens.

Mr. OWENS. Yes, Mr. Secretary. I, too, would like to welcome you on behalf of the workers of America. I welcome you as a liberator. They have had 12 years of a Department of Labor that has strangled their best efforts and aspirations toward improvement, and we certainly welcome this new administration.

I don't want to belabor the point, but it has already been made before, that this is a minimal effort relative to our competitors. Let's just take Germany and Japan. Would you just briefly elaborate on the standards that they have set in the treatment of their worker assets on this particular issue. What kind of benefits do they enjoy with respect to family and medical leave in Germany and Japan?

Just for the record, I would like it to be known that this is a compromise bill, this is a minimal bill, this is a bill negotiated during the Reagan and Bush administrations as the best that we could get. We are going forward with it, but it is a definitely a compromise and there are standards in the industrialized world which are much higher than this.

Secretary REICH. In fact, Congressman, standards in the industrialized world are much higher. Not only do most workers in Germany, Japan, and other industrialized nations get more time when they need it, when there are substantial illnesses, family problems, maternity care, but also in a lot of nations you get paid leave mandated, not simply unpaid leave.

I am not suggesting that that is what we want to do now. I know that this is a very carefully crafted bill. But I just wanted to underscore your point and the point that Chairman Ford made before, and that is that we are playing catch-up here. We are way behind other industrialized nations. And, by the way, these are industrialized nations that have done better than we have at improving productivity in recent years. These are industrialized nations which have become very strong competitors of ours because they nourish their human resources.

Among the major industrialized nations, the average minimum paid leave is 12 to 14 weeks, with many also providing the right to unpaid job-protected leaves for at least one year.

Mr. OWENS. They have paid leave for 12 weeks?

Secretary REICH. Many of them. Many of them are also providing the right to unpaid job-protected leaves for at least one year. Some of them actually also provide for paid leave. That is my understanding.

Mr. OWENS. Thank you, Mr. Secretary.

Chairman WILLIAMS. Thank you.

Did Mr. Boehner return?

Mr. Ballenger.

Mr. BALLENGER. Thank you, Mr. Chairman.

Mr. Secretary, it has been quite some time since you taught us up in Harvard to learn how to be a Congressman. I have been here for a while yet, and I still haven't learned, but I am hoping that you will continue to teach the rest of us.

I would like to have one question put to you. You mentioned the GAO study. Those of us that have been in Congress for a little while don't necessarily believe that the GAO, or the OMB, or whatever it is—those are the people who have predicted that we are

going to balance the budget for the last 40 years—we are going to balance it next year and the year after, and they never have had their numbers right. But they came up with their study of actual costs.

I am a manufacturer. I do have four different ways of actually getting leave to my employees, and I am sure that after this is all over I will have one, which is sad, but that is the way it is going to be.

But the GAO study said that the cost was four dollars and something. That study was done in, I think, 1989. Obviously, medical costs have exploded since then, and the idea that it only costs four or five dollars a year I thought was laughable at the time they brought it up.

If a person's job is important to the manufacturing business and it doesn't cost anything when they leave, you don't really need them. I am not trying to be cold-blooded about it, but the truth of the matter is, if a person can go off the job for 12 weeks, or whatever length of time they want to take off, and there is no need to hire a replacement, there is no need to work overtime to cover for that person, there is no need for all that, all it is going to cost is four or five dollars for the health insurance while they are gone, obviously whoever did that study didn't have the slightest idea about how to run a business.

Is it not, in your mind, somewhat laughable to say that it is only going to cost four or five dollars?

Like I said, I have already done it in my home company, I'm all for doing it, but I'm just against the Federal Government doing it because they screw up everything they mess with.

Secretary REICH. Congressman, the study to which you referred, I have every basis for thinking that it was a good study. The GAO is a highly reputable organization, reports directly to Congress, not part of the executive branch.

Mr. BALLENGER. That is what is wrong with it.

Secretary REICH. With regard to that figure, the figure in my head is a little bit over five dollars, I think five dollars and maybe 30 cents a year. You are right, medical costs have increased since then. Maybe if we got medical costs under control, ultimately the costs would be less.

The point, though, that you are making broadly is that—and I agree with you—if it is profitable for companies to gain the commitment and loyalty of their workers, why aren't they doing it anyway?

My response to that is, the best companies in America are. The most profitable companies, the most competitive companies, are doing it; they are already doing it. And one of the responsibilities we have, whether it is child labor legislation or whether it is setting minimum standards of decency in other areas, discrimination laws—the best companies in this country don't discriminate; the best companies in this country don't use child labor.

Mr. BALLENGER. Right.

Secretary REICH. The point I want to make is that occasionally government has got to step in and provide a floor.

Mr. BALLENGER. I'm not against that at all. I was just trying to get the point across that to say that it only costs the company four

or five dollars because of a government study is laughable in the fact that it has to cost substantially more than that, and I am not really arguing the point whether it is good, bad, or indifferent. I am just saying, to have the government come along and use a number that they dreamed up doesn't make sense.

Let me ask one more question because I am really not sure about this. The foreign countries that have this benefit already, is it not underwritten by their own governments?

Secretary REICH. No. It is mandated—my understanding—and, again, we are going by my understanding, it is my understanding based on research I did quite independently of this bill or these hearings. My understanding is that these laws and regulations governing the workplace. This is part of a safety net that the business community participates in.

In most of these countries, you have government also providing something of a safety net, but here you have business actively involved, just as they are actively involved in, say, apprenticeship-like programs. The business community in most of these countries takes a very active role in developing, nurturing, their workforce, as I hope our American business community will, and the best companies already do.

Mr. BALLENGER. Well, I go back to—and I'll shut up after this—I go back to the best run companies and the wonderful way that they have treated their employees by taking care of them, like IBM, and Sears Roebuck, and General Motors—have done a beautiful job of taking care of their employees, especially as they can them all.

Just a slight aside, sorry. I hope your sense of humor is still as good as ever.

Thank you.

Chairman WILLIAMS. Mr. Martinez.

Mr. MARTINEZ. Thank you, Mr. Chairman.

First of all, let me congratulate you, Mr. Secretary, on your appointment. I think it was a good appointment.

You can see from the remarks that have been made here that there are people that have a perception about what this bill does, and all the facts and statistics and GAO studies are not going to change their minds because their minds and their feet are set in concrete. So I don't even want to get into some of the facts.

When you look at a study like GAO did, there are so many ramifications about that study and so many factors involved in making the study—size of company, number of employees—and to say today that if you lose an employee for 12 weeks you don't need him belies the fact that today in this kind of modern work area we have temps and every other kind of thing to make up for the lack of that employee and you may still need him. More important than that, the employee needs the job; that is the most important part.

You know, President Clinton said in his inaugural speech, "There is nothing wrong with America that can't be cured by what is right with America," and I remember that during the campaign there was a big stress by the other side on family values. Well, what is right about America is family values. But there is something wrong with America if we support family values but fail to support the family. That is basic. And the Family and Medical

Leave Act really supports family values because it allows the working family members to support what is most important to them without the fear of losing their job, and men and women ought to be able to work and know that they can fulfill their family obligation without fear of losing their job. You said that in your statement, and I appreciate that, and I commend you for that.

But we talk about the figures, you know, and where somebody says one size fits all as if it were a piece of clothing, and it is not, it is dealing with human cause and effect. The fact is that in this particular situation, one size does fit all, if you want to refer to it that way.

The fact that we talk about all is really misleading too, because not all are covered; 60 percent of the total workforce are not covered; 95 percent of the employers. If we are worried about cost to employers, 95 percent of the employers are not covered, and, of the 5 percent that are covered, in your statement you talk about those employers that are already doing it, and we know by the facts that have been given to us that there are a lot of employers.

My question to you is, what percentage, do we know—and if we don't know, we ought to dig that up—what percentage of that 5 percent that are covered now, employers, are already doing it anyway? I would venture to say maybe half. Do you have any idea?

Secretary REICH. I don't have the figures, Congressman. My estimate—again, based upon the work that I have done before over the last few years—is that you may have about a third to a quarter of those employers already providing it, but, again, that is the estimate that I arrived at by my own independent research.

Mr. MARTINEZ. About one-third?

Secretary REICH. About one-third.

Mr. MARTINEZ. That is very good, really, and that just means that another two-thirds are now going to be covered.

One last question quickly, because I see the yellow light. You know, President Clinton when he was campaigning made it very clear that he was in favor of this bill and intended to have its passage as soon as he got into office and sign it as quickly as he could, and yet there were a lot of employers, a lot of big corporation heads, and everybody else in big business that supported him. They must have understood very quickly his intentions, and if they were so worried about the cost, why did they not reflect that by not endorsing him?

Do you have any sense of how that portion of the business community that did support President Clinton feels about this particular law since they did support him?

Secretary REICH. Well, I had dinner last night with a number of chief executives who were very involved in the Clinton campaign, top executives from companies like Xerox, and they are very supportive of this kind of legislation and other initiatives which the Clinton administration might take in the direction of cementing the relationship between workers and managers and providing a more healthy environment of worker-management relations. I intend to rely on those companies to spread the word, to be vanguard companies, evangelical among their peers.

Nobody wants to regulate and stipulate and have inspections and paperwork. No, that is not the way to go. A lot of it has to do with

making sure that companies understand the importance of their workers that they do this necessarily voluntarily. Here, we have got to do it; we have got to set a minimum standard.

Mr. MARTINEZ. Thank you, Mr. Secretary, and God bless you.

Mr. Chairman, I have a statement that I would like to enter into the record.

Chairman WILLIAMS. Without objection, the gentleman's statement, the Secretary's statement, and all other statements will be printed in the record.

Mr. Hoekstra.

Mr. HOEKSTRA. Thank you.

Welcome to government. Like you, I am new to government. I have only been here three weeks, but, like many of the people on this committee, I have also been working on this issue for a number of years. I worked for one of the companies that has been identified as one of America's most admired companies. In the book that just recently came out, "The 100 Best Companies To Work For," three of them are headquartered within five miles of my home.

I find it interesting that the approach we are taking is to mandate this trust and integrity, and I think if you go to talk to many of these companies that have been identified as the 100 best places to work, you will find that the reason that they have a quality work environment and they are successful is because they have developed a relationship—a partnership—in terms of identifying and solving problems.

I think in your opening statement you said something about this proposal hurting enlightened companies. I'm not sure I heard that correctly, but I think you said something like that. If you did, I would absolutely agree with you, because any time you take away the flexibility for employers and employees to negotiate and solve their own problems, and it is the "Father knows best," in this case, government, I think you are going to start creating some problems. I don't think this will be the silver bullet that starts to create trust and integrity between management and employees.

In terms of the future direction of the Clinton administration and yourself, I would be interested in understanding the balance that you will have between legislation which will mandate minimal standards and, perhaps, a revitalized Labor Department that might help enlighten and educate companies so that they can see how this works in their best interest—so that they can do it voluntarily.

Secretary REICH. Congressman, just one point. I did not mean to imply, if I did imply, that this legislation will in any way burden enlightened companies. Quite the contrary. Enlightened companies are already doing it. They will not be burdened at all by something they are already doing. This legislation will simply help them in the sense that they may be burdened right now by the fact that other companies which are less responsible create a climate of distrust among employees generally which those enlightened companies have a slightly harder time overcoming, so that those less responsible companies that are not providing family and medical leave really spread an environment, create an environment, of distrust between labor and management that we all pay for.

Now your second point having to do with enlightening and educating—absolutely. One of my jobs as Secretary of Labor is not only to carry a club but also to talk and work with and educate and exhort and use the most progressive companies in the United States as helpmates in that effort, and I plan to do that.

Mr. HOEKSTRA. Great. Thank you.

Mr. KILDEE. [presiding] Mr. Payne?

Mr. PAYNE. Thank you very much.

Mr. Secretary, it is also very good to see you, and I think that the points that you have made about putting people first, are key. And I think that we are experiencing, perhaps, a change in attitude, hopefully, during this administration. I was very pleased to meet you at a reception. Of course, there is nothing unusual about meeting people at receptions in Washington. It is just that the reception was sponsored by the CEO of, I think, General Motors and the president of the UAW. That is kind of unique.

And I mention that because of the partnership that I think we need to look at as a Nation. We have had 12 years of "Father knows best about pulling us apart." Father knew best about doubling the war budget and reducing taxes for the very wealthy. Father knew best about deregulating banks. Father knows best about trying to do the right thing.

So I am just here to say that we have a family medical leave program in New Jersey. It might be interesting to have your commission look at the States that already have it and see that we haven't suffered because of it. As a matter of fact, we were doing very well until the recession came along, and because of increases in high technology and the decline of older urban cities, has a combination effect that has increased the flight of jobs out of our area. But I think the easiest and the quickest thing to do is just to evaluate those States that have it.

I am truly disappointed, though, in this watered down version. It was watered down so that the previous administration would not veto it, and I wish we did not start with that same premise, I am personally disappointed. Hopefully, we can move towards having that other 40 percent covered. I was the personnel manager for a company of 50 persons, and this bill can apply to companies under 50 people, believe me. It could apply to companies of 25, and probably even less than that, because in smaller companies people do everything and you always have absenteeism.

And the other thing, being a man, you know, I certainly would be unable to have a baby. But I don't know where this notion that three months is just enough for maternity. You know, many times people have to take off a month or a month and a half prior to and even more time before, and it is very difficult to find quality care or any kind of care for an infant of a month or two months' old.

So I am just baffled by some of these statements that come out indicating that now three months is great for maternity. I think that it should really be if in fact a child has some illnesses or problems that it should have special provisions to provide for a person. Because if, you know, God willing, you have the baby in the middle of December and you have got to go back to work in January, it is a little tough to take an infant out if you have to do it.

So those are just some of my feelings, and I don't want you to necessarily respond, but I want to yield the balance of my time to my colleague here who would not have the opportunity to speak and she does have a point she wants to make.

Ms. WOOLSEY. I too am new, and I welcome you. Like you I am delighted to be here. My background includes 12 years' high-tech manufacturing as a human resources manager and 10 years as a human resources consultant. I want you to know that I got a call from a client in North Carolina after I won the election telling me, "Lynn, we always thought you advocated too much for the employee. Yet, we have had your policies in place, which included family and medical leave, for many years. We now know that you were also advocating for the employer." Good management practices take care of the employee, and I am with you 100 percent on this.

Secretary REICH. Thank you.

Mr. KILDEE. The gentleman's time has expired.

The gentleman from California, Mr. McKeon.

Mr. McKEON. Thank you very much. Mr. Secretary, I enjoyed meeting you just before this meeting. I, like Mr. Hoekstra, am new to this body. I come from a retail background. I understand the situation that your mother and father were in. My mother and father were in the same situation when they started our business almost 30 years ago. They had no leave. If they had to grab a sandwich or something, they had to wait till the customer left, if they were lucky.

Our business has grown. Now we have 50 stores, run by my brothers. And we have done this kind of thing for years. We have provided for our employees.

It bothers me a little bit the comment that workers will not be committed to their job and the business that they are a part of unless they are given something like this. I think that we have had dedicated, committed employees for years. I think the way you have dedicated employees is by treating them properly and this is one of the ways, of course. I just hate to see it have to be done through a mandate.

I come from a conservative area. I have talked to a lot of business people, and just as was pointed out here, they can produce this thick book of regulations. Every time I see them they say, "Go back there and tell them what it is really like." You know, people that are on the front lines providing jobs and businesses, are just fed up with us sitting back here putting out more and more mandates that they are going to have to follow.

The problem is, I guess, we do this because there is always somebody that is going to take advantage of somebody else. So we put a law in place to benefit the few, realizing that some are already, as you talked about, enlightened.

What I am concerned about is if this doesn't cover 94 percent of businesses, those with less than 50 employees, will this put a greater burden on employers if they don't provide the leave and will their employees want to leave to work for a big business who does provide this kind of a thing? Will this, then, be extended to all business, where it might even cover the "mom and pop?"

You know, I think when the comment was just made that this could be extended to businesses of 25, it must depend on the kind

of business. In a retail business where we have 1 or 2 people in running a store, if you give the manager three months off where do you get somebody to replace him? That is a tough thing.

I am just grappling with this. I feel the humanity part of it, but I struggle with the mandate and how much farther it will go after this bill.

Secretary REICH. Congressman, let me help you in your struggle a little bit, if I may presume. First, to clarify something I said, I didn't mean that the only way you get commitment from employees is to provide family medical leave. I simply meant that family medical leave helps create a condition, an environment in which employees because they know that there is a job for them or a comparable job waiting should they have to leave for a medical or family emergency, they feel more secure about committing themselves. They feel more secure about running that extra mile.

If they don't feel that there is going to be a job waiting, that insecurity itself, that uncertainty may have a chilling effect upon their commitments in the future. And there is a lot of evidence that tends to show that. That is why the best and most far-reaching companies, the vanguard companies in America already provide something like this.

I also want to clarify that the bill covers 60 percent of the workforce, but only 6 percent of the employees. Again, because of that exemption for small business.

Thirdly, I want to emphasize that I am sensitive, and I will be sensitive, to the burdens on small businesses, and also paperwork. I am concerned about American competitiveness, the well-being of employees in America, front-line workers. We are not going to have higher living standards if we unnecessarily unduly burden American companies, I know that. But when all the weighing and balancing is done, in my view, this is a step in the right direction.

Let me just make one final point having to do with some of the State experiments, some evidence we have. A study commissioned by the Ford Foundation that was undertaken by the Families and Work Institute, they surveyed employers in four States that have enacted family leave laws. This is Minnesota, Oregon, Rhode Island and Wisconsin. Now data from that study show that sizable majorities of employers in those States report that the leave laws they have are not costly or burdensome. Ninety-one percent say that State family leave laws are not difficult to implement. Ninety-three percent say that the laws had not forced them to provide fewer health benefits. Seventy-one percent said that there was no increase in training costs, no increase in costs related to unemployment insurance, and so on and so forth. So we have experiments. You know our States are laboratories. We have some experiments showing that this is really not burdensome.

Mr. KILDEE. The gentleman's time has expired.

Mrs. Unsoeld.

Mrs. UNSOELD. Thank you, Mr. Chairman.

It is regrettable for the American worker that we have been so many years waiting, but I am awfully pleased that we are going to be the team to now put this in place. So welcome, Mr. Secretary. I appreciated your comments to place into the record what our international competitors are doing and that they have up to 12 weeks

of paid leave for employees as a standard in many of those countries and then up to an additional year of unpaid leave.

Do you happen to have any information on what some of those nations do in regard to small businesses?

Secretary REICH. Congresswoman, I don't have that information. It would be interesting to get, and I think it is relevant to, perhaps, many other items that might be on this committee's—this subcommittee's agenda. I will try to find that.

Mrs. UNSOELD. I would very much appreciate that. I think there is a need for us to compare ourselves with those countries often who are doing better than we in some of these areas. So any additional information you may have would be most welcome.

But again, welcome to you.

Secretary REICH. Thank you.

Chairman WILLIAMS. Mrs. Mink?

Mrs. MINK. Thank you very much, Mr. Chairman. And, Mr. Secretary, a very warm Hawaiian welcome to you. Appreciate very much your undertaking this important responsibility for President Clinton. Those of us who have served on this committee understand its importance in developing socioeconomic policy for this Nation, and we are intent upon helping the administration to develop those kinds of mechanisms which will strengthen our workforce and our ability to compete internationally. And I agree with you wholeheartedly that this legislation is very late coming and very important.

My only disappointment is that it is not as strong as I would have wished it to be, and it comes as a product of the work of the Bush administration in trying to water down our efforts over a number of years. But I understand the reasons for moving forward with this piece of legislation because it has been through the mill and we want to make sure that we get something on the books as soon as possible.

My question to you, Mr. Secretary, is what engagements or efforts are you going to make as Secretary of this Department to look at the implementation of this bill? And how soon can we expect a report back and recommendations for modifications and changes in order to make sure that more workers out there are covered, and with less burdensome restrictions? And the one burdensome restriction that I want to especially note, which I have great discomfort over, and that is the provision which allows the employer to require that his employee who takes 12 weeks of unpaid leave could be required by the employer to use up all vacation leave, all annual leave, all other kinds of leave that this worker through diligence over years has put aside for other purposes and now could be required to use up all of that to constitute that 12-week period. Which should not be the case, but I understand why we did it in this legislation.

Can you tell this committee what efforts you will institute once this becomes law to make sure that we can get a rapid feedback on the areas that might be improved?

Secretary REICH. Congresswoman, I draw your attention—there is in the bill, I think very appropriately, a provision establishing a commission on leave and the commission will do the comprehensive studies to which you referred, looking at existing and proposed

policies, potential cost-benefits, take a look at actually how this thing is functioning and now later than two years after the date on which the commission first meets prepare and submit to Congress a report on these subjects. So we have built into the bill, very wisely, a reporting mechanism to see how this actually is functioning, and I think that the two years make sense in that it probably is going to require that amount of time to get the data we need to see how this program is in fact working.

Mrs. MINK. One final question has to do with how this dovetails in with unemployment compensation. We have explained this to our constituents that this is a 12-week period in many cases unpaid, except for the provision that I noted. How do you see the unemployment compensation provisions as they will relate to this law, and do you see any necessity to change those provisions to adapt to the law that we now have?

Secretary REICH. I don't see any necessity to change the unemployment provisions. Just like the Fair Labor Standards Act, I think this is entirely consistent with the unemployment provisions we have. Again, I don't see any potential tensions within those legal regimes.

Mrs. MINK. Under the four provisions for which the employee could get this 12-week unpaid leave, in your view would they be automatically entitled to unemployment compensation if after the 12 weeks they could not return to work and lost their jobs?

Secretary REICH. To the extent that the unemployment compensation provisions, again, even though it is a Federal-State program, would permit that. Yes. That would be entirely consistent.

Again, I don't see, having looked at this as carefully as I can, and also looked at the unemployment provisions and also the Fair Labor Standards Act, because I know that there is also a question with regard to exempt and non-exempt employees, I don't think that there is any inconsistency in terms of the intent and also the execution of those provisions.

Mrs. MINK. Thank you very much.

Secretary REICH. Thank you.

Chairman WILLIAMS. Thank you. Mr. Klink.

Mr. KLINK. Thank you very much, Mr. Chairman. Mr. Secretary, again to the many voices that you have already heard I add my congratulations. I also enjoyed hearing you in Cambridge. We were happy to have you participate in our recent freshman program up there.

I am very happy to be an original cosponsor to this family leave legislation, and I bring a little different background, I think, than some of the other members of this committee. Number one, I am a member of AFTRA—the American Federation of Television and Radio Artists—AFL-CIO, and I am also a small business owner, and I come from a family of entrepreneurs.

I realize from the standpoint of the worker how important it is to be able to get away from your job to take care of family needs. If you have a relative who is sick—it just so happens right now my wife is going through this with her father, and I understand how important it is for her to be able to do it and other people that I have met. I also know that in the birth or the adoption of a child how important it is to hold that family together.

There are, though, some concerns that I have. As the gentlelady from Hawaii talked about and the Honorable Mr. Payne earlier, this is a watered down version. Do you see this as a starting point or are you thrilled that we are at this point with the legislation now?

Secretary REICH. Let me say, Congressman, that President Clinton supports this legislation. This is a very important step in the right direction. I don't want to at this point say it is the first of many steps in the right direction. I don't want the American business community or others who might fear that this is the proverbial camel's nose under the tent to get terribly concerned at this point, because we are going to be very careful there is built into this legislation, as I pointed out, an evaluative mechanism to make sure that we can look at what we are doing. It is, I think, a very important step.

Mr. KLINK. How do you see this—you mentioned earlier that we are playing catch-up. I think many of us realized that as we were working on this legislation. How do you see this comparing with what people have in other industrialized nations?

Secretary REICH. Other industrialized nations have more comprehensive policies than we do. And again for the record I want to emphasize this. My information is that among the major industrialized countries the average minimum paid leave, and this is paid leave, is 12 to 14 weeks with many also providing the right to unpaid job protected leave up to a year. And these are countries, many of them, which have higher rates of productivity growth than we do in recent years.

Mr. KLINK. Mr. Chairman, I yield back the rest of my time.

Chairman WILLIAMS. Mr. Engel?

Mr. ENGEL. Thank you, Mr. Chairman. And welcome, Mr. Secretary.

First of all, Mr. Chairman, I want to set the record straight. Since everyone is taking credit for Yogi Berra, I want to say that the people of my hometown, Bronx, New York, in which Yankee Stadium is situated, we want to take some credit too.

Let me say, Mr. Reich, that I followed your career for many years, and I am just delighted that you are in this position.

Secretary REICH. Thank you.

Mr. ENGEL. And I really look forward to working very closely with you. It never ceases to amaze me that people that want to kill the law always say that it doesn't go far enough, when in fact they really don't like it to begin with. But I want just to point out two provisions and then ask a question.

Section 401, part B, says "State and local laws. Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State and local law that provides greater employee leave rights than the rights established under this Act or any amendment made by this Act." So, in fact, if a State is more generous this will not supersede it.

And farther down in section 403 it says, "Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act."

So I would echo the comments of my colleagues on this side of the aisle, Mrs. Unsoeld and Mrs. Mink and Mr. Klink, that we hope that this, if it works, will be a first step, because I happen to think that 12 weeks is actually woefully inadequate. But it is a first good step, and I really welcome the new administration's support. I think it is refreshing having been here for the past four years and being frustrated with vetoes and negativisms.

I wanted to just focus in on Canada because I think Canada is the country that is most analogous to the United States in terms of culture and I know that the policies in Canada are far more generous than even this bill provides. I am wondering if you had at your fingertips, or if you don't, if you could get them to me, specifically what the Canadian system provides and how that has been working?

Secretary REICH. I will get them to you, Congressman. I don't have them at my fingertips. Maybe one of my assistants has it at their fingertips.

Oh! It is at the fingertips.

Mr. ENGEL. Fingertips.

Secretary REICH. Now, in Canada, according to this material, women can take maternity leave for up to 41 weeks and receive 60 percent of salary for the first 15 weeks. And then you should also note that 135 countries provide at minimum maternity benefits, and the record, again, that has been assembled over many years is full of those kinds of comparisons.

I do want to emphasize once more, Congressman, something that you suggested at the start. This is a floor, this bill. If States want to do more, if companies want to do more, that is fine. This simply establishes a minimum requirement.

Mr. ENGEL. Well, thank you. I think those statistics speak for themselves and the last I heard it hasn't impeded Canadian industry or Canadian business, and I think, again, that the people who are saying that this goes too far or that this will bring gloom and doom to American business ought to only look across the border to our north.

Thank you very much.

Secretary REICH. Thank you.

Chairman WILLIAMS. Ms. Woolsey.

Ms. WOOLSEY. I will just add on. I talked awfully fast before.

Are you looking into coverage for congressional employees? Unless what they already have is more generous than this. I think the freshman class, almost in its entirety, agrees that they should be not exempted from the employment rules of the rest of the Nation.

Secretary REICH. I assume, in fact I think that the bill does cover all congressional employees?

Mr. FORD. Would the gentlelady yield to me?

Ms. WOOLSEY. Yes.

Mr. FORD. The bill covers all Federal employees and it also covers the employees of the House and Senate. However, when you talk about covering people with a law that is enforced by the executive branch, when you deal with the courts and with the legislative branch, you have a constitutional barrier to overcome. So, to overcome that barrier, the Secretary will not be enforcing the law

with respect to our employees because the Constitution says he is in the wrong branch of government to do that.

I assume House Administration Committee would have the responsibility, as it does now for the Fair Labor Standards Act. During the campaign I am sure you heard a lot of people talking about the fact that we pass all kinds of laws and exempt the Congress. Well, we don't exempt the Congress from the laws, but we do exempt the Congress from having the executive branch interfere between you and your employees. So the way in which this bill handles it is to require you to follow these principles, but you will not answer to the Labor Department. You will answer to the internal mechanisms of the House and in the Senate they will answer to their respective committees.

So the bill does afford the same protections.

Ms. WOOLSEY. Okay.

Mr. FORD. It is just a different enforcement mechanism.

Ms. WOOLSEY. As long as it is equal. Thank you.

Chairman WILLIAMS. Mr. Romero-Barcelo?

Mr. ROMERO-BARCELO. Mr. Secretary, I want to congratulate you on your appointment, and I want to congratulate the President also on his selection. I think we are all very excited to have you as the new Secretary of Labor, and we look forward to many good things happening in this field.

I want to mention that at home I am involved with my son in a franchise for 7-11, so we are affected by this law. But I think it is a good law, and I am one of the original sponsors.

I want to mention also that I cannot see how one could be concerned with productivity, because a worker whose family, a close relative, a son, parent or spouse, is sick and needs attention cannot be productive in the workforce. We found that out quite a while ago. We would rather have that person having the time to take care of their family, so that when he comes back to work he has his mind on his job. But when he is concerned about his family, he doesn't have his mind on his job and that interferes with the performance of others. So I think in all respects this is a very, very good law.

I want to make sure, though, that this law will be applicable to Puerto Rico. I can vote now in committee. I will be able to vote in the Committee of the Whole, depending on what happens in the lawsuit that has been filed by the Republicans against our vote in the Committee of the Whole. I won't be able to vote on the floor.

But I was looking at the definitions and the definitions refer to the word "State" back to the Fair Labor Standards Act, and the Fair Labor Standards Act says "State" means "any State of the United States or the District of Columbia or any territory or possession of the United States." Well, Puerto Rico is a Territory, but because it has been given a name such as commonwealth it creates confusion. Even some of the courts have been misled by the word commonwealth. We are a Territory.

I just wanted to make sure for the record that the Department of Labor is aware of this and that it considers Puerto Rico to be included in this bill.

Secretary REICH. My understanding, Congressman, is that Puerto Rico is included in the bill. That is the administration's position as well.

Mr. ROMERO-BARCELO. All right. Thank you very much.

Chairman WILLIAMS. Mr. Strickland? Mr. Green?

Mr. GREEN. Thank you, Mr. Chairman. All freshmen look alike sometimes.

Mr. Secretary, I want to congratulate you on your appointment, but also the chair of the committee and of the subcommittee for making this our first bill. I am sorry some of the members from the minority party are not here. Some of us on this side also have both experience as members of labor unions—I am a CWA member—but also in small businesses. Often in small businesses we know the needs of our employees much closer than those with 50 or more employees. Many small businesses already apply this, even though it may not be part of the union contract. It is applied because it is a small business and they know the needs of their employees.

One of the concerns I have, and during the campaign we all heard it, about how we need to be more competitive internationally, and I know you have been a proponent of that. Also we have seen a great deal of effort in the last few years on the competitiveness of our workers, but also I talked about and I know other freshmen talked about how we need to also see competitiveness on the benefits, and this is one of the benefits that, as you pointed out, that other countries are even more competitive, providing more benefits, and this is really a first step. Even though you talked about the camel's nose under the tent, a number of us also see this as a first step. It is somewhere down the line. Either some future Congress may improve on this or we will see some competitiveness whether it be with Canada or with some of our European competitors or Japan, so our workers are compensated not just in monetary terms but also in benefits on the same level. We need to compete but we need to compete on everything including benefits.

The other concern was the provision in the bill that required the doctor to be specific, or the physician or health care provider. As I read the bill, it is a broad interpretation in that a physician or a health care provider just says that that person is ill and they don't have to actually provide a great deal of medical history for the employer. I am concerned about some of the individual rights of that employee not having to prove their whole medical history to their physician. If you could just share that with the committee and for the record.

Secretary REICH. Yes. My understanding is the same, Congressman. That we want to make sure that employees can get swift and expeditious coverage when they need it. We don't want to make this onerous, but at the same time we want to make sure that employers are confident that the employee really does need to take family medical time off without pay, and this was the effective balance between the two, in terms of a doctor's letter or other information from a doctor suggesting that without getting into the details with the privacy of the employee's medical history.

Mr. GREEN. So just a doctor's letter would be sufficient for a person to be able to claim the provisions?

Secretary REICH. I believe that that is correct.

Mr. GREEN. Okay. Okay, thank you, Mr. Secretary.

Chairman WILLIAMS. Thank you. I would like to note, Mr. Secretary, before you leave, and you may want to have the courtesy of a closing statement before you leave, but I do want to note as Chairman of this subcommittee I do not see this bill as the nose under the tent. If we had intentions of changing this law, we now have a President and a majority in both the Senate and the House which would have allowed us to introduce an entirely different bill. If we wanted more weeks we would have put more weeks in it and tried to pass it and see if we couldn't get it signed.

This is not a nose under the tent. I do not intend, if I am here in future Congresses, to come back continually revisiting this issue trying to get more and more. If we were going to do that, I say again, we would have done it at the outset. So I don't want the business community in America to perceive from this hearing that this bill is simply the tip of the iceberg.

From this Chairman's standpoint, this bill has been amply negotiated, has gone through eight years of considerable consideration, and it is now the object of our affections and we intend to—speaking for myself as Chairman, we intend to stay with it.

Mr. Secretary, as you can tell from the questioning, we are delighted that you came with us early. In fact, in your second day in office. We are more than pleased that you are the new Secretary of Labor, and we thank you again for being with us. Do you have any closing thoughts for us?

Secretary REICH. Well, only, Mr. Chairman, to thank so many of the members of this committee for all the work they have done over the many years on this bill. This was a real endurance test for many of you and I am aware of that. President Clinton is enthusiastic, not only about this bill, but also about the workplace agenda. I am enthusiastic, and I look forward to working with all of you in the future.

Thank you.

Chairman WILLIAMS. Thank you very much.

We will now ask our panel to come forward: Mr. Lichtman, Mr. Losey.

Judith Lichtman is President of the Women's Legal Defense Fund, headquartered here in Washington, DC. Ms. Lichtman, it is nice to see you here again. Please proceed.

STATEMENTS OF JUDITH LICHTMAN, PRESIDENT, WOMEN'S LEGAL DEFENSE FUND, WASHINGTON, DC, ACCOMPANIED BY DONNA R. LENHOFF, GENERAL COUNSEL AND DIRECTOR, WORK AND FAMILY PROGRAMS, WOMEN'S LEGAL DEFENSE FUND; AND MICHAEL LOSEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SOCIETY FOR HUMAN RESOURCE MANAGEMENT, ALEXANDRIA, VIRGINIA

Ms. LICHTMAN. Thank you so much, Chairman Williams. I hope today is the last day you will see me here on this issue of this bill.

With me is my colleague from the Women's Legal Defense Fund, Donna Lenhoff, who I just described to Secretary Reich as the font of all wisdom on this bill, and I do mean it.

Chairman Williams and members of the subcommittee, I will put my full statement into the record and have a few quite brief remarks. We are enormously appreciative of the opportunity to appear before you today as we embark on the final steps on what has been a very, very long road for working Americans.

The promise of quick congressional action on the Family and Medical Leave Act and of a signature by a President who campaigned hard in support of this legislation shows so well what breaking the gridlock can mean to ordinary Americans. But for President Bush's veto pen, we would have had a national family and medical leave policy in 1990.

Since then more than 300,000 workers have lost their jobs because they had no job-guaranteed medical leave. Businesses have lost nearly \$500 million in hiring and training costs needed to replace workers who lost their jobs for want of leave.

But no longer will workers or businesses lose out. We have seen the dawning of a new day, and as our President said in his inaugural address, "a new season of commitment to our Nation's working families" as we turn from an administration that twice vetoed this bill to one that will work hard hand in hand with us on behalf of working Americans and their families. As just one example, what a pleasure it is to sit here today with the a Secretary of Labor who will work with us to enact and implement family and medical leave, a minimum labor standard.

Mr. Chairman, as you know so well, there is little left to do or say in building the formidable record in support of family and medical leave. The bill's overwhelming bipartisan support is testament to the hard work of Representatives Williams, Ford, Clay, Schroeder, Roukema, Gordon, Weldon, and many others of the House of Representatives, to the families who have made their needs and their views known, and to the broad coalition that has pushed tirelessly for the bill's enactment the last eight years. A coalition representing the concerns of women, of children, of labor, of persons with disabilities, senior citizens, the civil rights and religious communities, and health care providers.

In view of the compelling record already built, let me emphasize just two key points that have long been our focus. First, the Family and Medical Leave Act is unabashedly pro-family as it provides valuable support to America's working families. We often point out that the vast majority of American workers do not currently enjoy the job security guaranteed by the Family and Medical Leave Act. Behind their statistic are the real women and men who pay a steep personal price for the lack of job-guaranteed leave. These workers are the true heroines and heroes of this battle for our national policy.

I have in mind individuals like Jim and Kathy Censullo of New Hampshire. Ten days after the Censullos' son Anthony was born with a serious heart condition, Mr. Censullo, a video store manager, received a Mailgram firing him for his absence for just a few days. As a result, the family has endured extraordinary financial distress, relying at times on emergency Medicaid to cover Anthony's medical bills.

For millions like the Censullos, enactment of the Family and Medical Leave Act will mean that at last their economic liveli-

hoods and their health insurance won't be at risk during times of family need.

Second, the Family and Medical Leave Act not only improves the lives of working families but also promises to help revitalize our economy. Indeed, studies have proven time and time again that family and medical leave saves money for businesses by reducing turnover and boosting morale and productivity.

As our new Secretary of Labor, Robert Reich, has just affirmed, if we want an economy that is truly competitive that it enables a diverse workforce to be as productive as possible, then we must have family leave policies in every workplace, not just in an enlightened few. Today, families, the new administration, Members of Congress, and an extremely broad-based coalition speak with one voice as we renew our commitment to helping the workers be both productive employees and responsible family members.

This is indeed a powerful and historic moment for the Women's Legal Defense Fund and the coalition we have led for eight long years, as we anticipate the speedy enactment of the Family and Medical leave Act with great hope, with great pride and with great optimism. And we thank you today for holding this important hearing.

Chairman WILLIAMS. Thank you very much.

[The prepared statement of Ms. Lichtman follows:]

STATEMENT OF JUDITH L. LICHTMAN
President, Women's Legal Defense Fund
Chair, Family and Medical Leave coalition

before the House Subcommittee on Labor-Management Relations
of the House Committee on Education and Labor

January 26, 1993

Chairman Williams and members of the Subcommittee, I appreciate the opportunity to appear before you today, as we take the final steps down what has been a long, long road for working Americans.

The promise of quick Congressional action on the Family and Medical Leave Act -- and of signature by a President who campaigned hard in support of this legislation -- shows so well what breaking the gridlock can mean to ordinary Americans. But for President Bush's veto pen, we would have had a national family and medical leave policy in 1990. Since then, more than 300,000 workers have lost their jobs because they had no job-guaranteed medical leave. Businesses have lost nearly \$500 million in hiring and training costs needed to replace workers who lost their jobs for want of leave.

But no longer will workers or businesses lose out. We have seen the dawning of a new day, a new season, of commitment to our nation's working families as we turn from an Administration that twice vetoed this bill to one that will work hand in hand with us on behalf of working Americans and their families. What a pleasure it is to sit here today with a Secretary of Labor who will work with us to enact and implement family and medical leave. How encouraging it is to know that

Congress and the Administration can work together to meet the challenges of our day. Thus we welcome an Administration, in concert with Congress and in keeping with the wishes of the American public, committed to helping workers -- especially working women -- to balance the needs of their families and the responsibilities of their jobs.

Mr. Chairman, as you know so well, there is little left to do or say in building the formidable record in support of family and medical leave. We have made a strong case in the eight years that we have worked for enactment of this legislation. Indeed, last year 258 members of the House affirmed their support for the Family and Medical Leave Act. This overwhelming bipartisan support is testament to the hard work of Representatives Williams, Ford, Clay, Schroeder, Roukema, Gordon, Weldon, Hyde, LaFalce, and other members of the House, to the families who have made their needs and their views known, and to the broad coalition that has pushed tirelessly for the bill's enactment. Indeed, because the FMLA addresses such a wide range of family needs, our coalition of advocates has been broad as well -- representing the concerns of women, children, labor, persons with disabilities, seniors, the civil rights and religious communities, and health care providers (a list of the organizations that have endorsed the FMLA and worked for its enactment is attached).

In view of the compelling record already built, let me reinforce just two key points that have long been our focus.

First, the Family and Medical Leave Act is unabashedly pro-family as it provides valuable support to America's working families. We often point out that the vast majority of American workers do not enjoy the job security guaranteed by the Family and Medical Leave Act. Behind these numbers are the real women and men who pay a steep personal price for the lack of job-guaranteed leave. These workers are the true heroines and heros of this battle for a national policy.

I have in mind individuals like --

o Jim Censullo of New Hampshire, who lost his job as a video store manager when he needed a few days to spend with his critically ill newborn son. Ten days after the Censulllos' son Anthony was born with a serious heart condition, Mr. Censullo received a mailgram firing him for his absence. As a result, the family has endured extraordinary financial distress, relying at times on emergency Medicaid to cover Anthony's medical bills.

o Brenda Iles, who adopted a newborn after working at a Louisiana department store for seven years. Although her managers gave her a character reference as part of the adoption process, they refused to grant her six weeks of leave to care for the infant, and she lost her job. Losing her annual income financially devastated the family, forcing Ms. Iles and her husband to file for bankruptcy and sell their new home.

o Florence McKeever, who worked for 14 years as a housekeeper for a private company in Washington, D.C., and was consistently praised for her job performance. But when she broke

her foot and was told by her doctor that she needed twelve weeks to recover, her employer would grant her no more than eight weeks of leave, and she lost her job. When Ms. McKeever tried to find a new position, she found that jobs for a 56-year-old woman who never graduated from high school were scarce, and, for the first time in her life, she was forced to apply for unemployment benefits.

For millions of workers like these, enactment of the Family and Medical Leave Act will mean that at last their economic livelihoods and their health insurance won't be at risk during times of family need.

Second, the Family and Medical Leave Act not only improves the lives of working families but also promises to help revitalize our economy. Indeed, studies have proven time and time again that family and medical leave saves money for businesses.

For example, Cornell economist Eileen Trzcinski and her colleague, William T. Alpert of the University of Connecticut, found that the cost of providing job-guaranteed leave is on average substantially smaller than the cost of permanently replacing workers who need leave. I noted earlier their estimate that American businesses could have saved \$500 million in turnover costs over the past two years had they not terminated workers facing medical emergencies. And because these researchers addressed medical leave only, their findings dramatically underestimate the job loss and business costs that

could be saved under the Family and Medical Leave Act. The experience of individual employers confirms these conclusions. Aetna Life and Casualty Company, for example, estimates that it saves \$2 million annually in reduced turnover costs because of its family leave policy.

As our new Secretary of Labor Robert Reich has affirmed, if we want an economy that is truly competitive, that gives a diverse workforce the opportunity to be as productive as possible, then we must have family leave policies in every workplace, not just in an enlightened few. This conclusion was echoed last week in hearings before the Senate Subcommittee on Children, Family, Drugs, and Alcoholism, by Diane Duval, a manager at Lotus Development Corp. and a representative of Businesses for Social Responsibility, a coalition of hundreds of employers who agree that the Family and Medical Leave Act makes good business sense.

In short, enactment of the Family and Medical Leave Act will give millions of workers and their families a better chance at economic security in times of crisis -- and some badly needed peace of mind. Today, families, the new Administration, members of Congress and an extremely broad-based coalition speak with one voice. Together, we renew our commitment to helping workers be both productive employees and responsible family members. This is indeed a powerful and historic moment for the Women's Legal Defense Fund and the coalition we have led for eight years as we anticipate the speedy enactment of the Family and Medical Leave Act with great hope, pride, and optimism.



ENDORISING
ORGANIZATIONS

**ORGANIZATIONS THAT HAVE ENDORSED
THE FAMILY AND MEDICAL LEAVE ACT**

OVERALL CHAIR: Women's Legal Defense Fund

ORGANIZATIONS:

9to5, National Association for Working Women
 ACORN, Association of Community Organizations for Reform Now
 Adoptive Families of America
 AFL-CIO
 Aid to Adoption of Special Kids - Oklahoma
 Amalgamated Clothing & Textile Workers Union
 American Academy of Child and Adolescent Psychiatry
 American Academy of Pediatrics
 American Adoption Congress
 American Association for Counseling and Development
 American Association of Retired Persons
 American Association of University Professors
 American Association of University Women
 American Bar Association
 American Civil Liberties Union
 American Federation of Government Employees
 American Federation of State, County, and Municipal Employees
 American Federation of Teachers
 American Home Economics Association
 American Jewish Committee
 American Jewish Congress
 American Life League
 American Medical Women's Association
 American Nurses Association
 American Occupational Therapy Association
 American Postal Workers Union

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American Psychological Association
 American Psychiatric Association
 American Society on Aging
 American Speech-Language-Hearing Association
 Americans for Democratic Action
 Archdiocese for St. Louis, Commission on Human Rights
 Arkansas Women's Project
 Asociaion Nacional pro Personas Mayores
 ASPO/Lamaze
 Association for Children and Adults with Learning Disabilities
 Association for Gerontology in Higher Education
 Association for Retarded Citizens
 Association of Flight Attendants
 Association of Junior Leagues International
 Association of Professional Flight Attendants
 B'nai B'rith Women
 Black Professional Women of Dallas
 California Family Action
 Cancer Care, Inc.
 Candlelighters Childhood Cancer Foundation
 Catholic Charities USA
 Catholic Golden Age
 Center for Law and Social Policy
 Center for Women's Policy Studies
 Child Care Action Campaign
 Child Welfare League of America
 Children's Defense Fund
 Church of the Brethren
 Church Women United
 Citizen Action League
 Clearinghouse on Women's Issues
 Coal Employment Project
 Coalition of Labor Union Women
 Colorado Coal Mining Women
 Colorado Psychiatric Association
 Commission on Human Rights
 Committee for Children
 Committee of Interns and Residents
 Communication Workers of America
 Communications Consortium
 Council for Children, Inc.
 County of Santa Clara Commission on the Status of Women
 Disability Rights Education and Defense Fund, Inc.
 Displaced Homemakers Network

Eastern Kentucky Coal Mining Women's Support Team
 Economic Policy Counsel, United Nations Associations
 Employment Law Center
 Equal Rights Advocates
 Epilepsy Foundation of America
 Evangelical Lutheran Church in America
 Families for Private Adoption
 Families USA
 Fathering Support Services
 Federally Employed Women
 Federation of Organizations for Professional Women
 Feminists for Life of America
 Food and Allied Service Trades Department, AFL-CIO
 Georgetown University Sex Discrimination Clinic
 Gray Panthers
 Hawaii Women's Political Caucus
 Highlander Research and Education Center
 Hollywood Women's Political Committee
 Human Rights Campaign Fund
 Illinois Coal Mining Women's Support Team
 Independent Federation of Flight Attendants
 Independent Union of Flight Attendants
 Indiana Coal Mining Women's Support Team
 Industrial Union Department of the AFL-CIO
 Institute for Child Mental Health
 Institute for Peace and Justice
 Institute for Women's Policy Research
 International Association of Fire Fighters
 International Association of Machinists
 International Brotherhood of Teamsters
 International Federation of Professional and Technical Engineers
 International Ladies' Garment Workers Union
 International Longshoresman's & Warehouseman's Union
 International Union of Electronic, Electrical, Salaried Machine and Furniture Workers
 Jewish Labor Committee
 JustLife
 Lady Miners of Utah
 Lambda Legal Defense Fund
 Latin American Parents Association -- National Capital Region
 Lawyers for Alternative Work Schedules
 Leadership Conference on Civil Rights
 League of Women Voters of the United States
 Longshoremen's and Warehouseman's Union, International
 Lutheran Office for Governmental Affairs

Maine Commission on Women
 Maine People's Alliance
 March of Dimes
 Men's Rights, Inc.
 Mennonite Central Committee, U.S. Peace Section, Washington, D.C.
 Mental Health Law Project
 Mexican American Business and Professional Women's Clubs of San Antonio
 Mexican American Legal Defense and Education Fund
 Mothers at Work
 Mothers Matter
 NA'AMAT USA
 NAACOG: The Organization for Obstetric, Gynecologic and Neonatal Nurses
 National Abortion Rights Action League
 National Adoption Center
 National Alliance for the Mentally Ill
 National Assembly of Volunteer Organizations
 National Association for the Advancement of Colored People
 National Association for the Education of Young Children
 National Association of Area Agencies on Aging
 National Association of Commissions for Women
 National Association of Developmental Disability Councils
 National Association of Foster Grandparents Program Directors
 National Association of Letter Carriers
 National Association of Mature People
 National Association of Pediatric Nurse Associates and Practitioners
 National Association of Older American Volunteer Programs
 National Association of Oncological Social Workers
 National Association of Protection and Advocacy Systems
 National Association of Retired Federal Employees
 National Association of RSVP Directors, Inc.
 National Association of Senior Companion Project Directors
 National Association of Social Workers, Inc.
 National Association of State Units on Aging
 National Black Child Development Institute
 National Coalition for Cancer Survivorship
 National Coalition of 100 Black Women
 National Committee to Preserve Social Security and Medicare
 National Conference of State Legislatures
 National Conference of Women's Bar Associations
 National Congress for Men
 National Consumers Union
 National Council for Children's Rights
 National Council for Research on Women
 National Council of Catholic Women

National Council of Churches
 National Council of the Churches of Christ in the USA
 National Council of Jewish Women
 National Council of Negro Women
 National Council of Senior Citizens
 National Council on the Aging, Inc.
 National Council on Family Relations
 National Down's Syndrome Congress
 National Education Association
 National Federation of Business and Professional Women's Clubs
 National Federation of Federal Employees
 National Federation of Temple Sisterhoods
 National Interfaith Coalition on Aging
 National Jewish Community Relations Advisory Council
 National Multiple Sclerosis Society
 National Organization for Women
 National Parent Teacher Association
 National Perinatal Association
 National Tay Sachs and Allied Diseases Association, Inc.
 National Treasury Employees Union
 National Union of Hospital and Health Care Employees
 National Woman's Party
 National Women's Business Enterprise Association
 National Women's Law Center
 National Women's Political Caucus
 NETWORK: A Catholic Social Justice Lobby
 New Jersey Coalition for Family and Medical Leave
 New Ways to Work
 Newspaper Guild
 North American Council on Adoptable Children
 North Carolina Council of Churches
 North Carolina Center for Laws Affecting Women
 North Carolina Equity
 North Carolina Women's Legislative Agenda
 North Carolina Women's Resource Center
 Northeastern Gerontological Society
 Northern West Virginia Coal Mining Women's Support Team
 Northwest Women's Law Center
 NOW Legal Defense and Education Fund
 Office and Professional Employees International Union
 Oil, Chemical, & Atomic Workers International Union
 Older Women's League
 OURS, Inc.
 Pennsylvania Coal Mining Women's Support Team

Pension Rights Center
 Planned Parenthood Federation of America
 Public Employee Department of AFL-CIO
 Religious Network for Equality for Women
 Retired Members Department of UAW
 Service Employees International Union
 Southern West Virginia Coal Mining Women's Support Team
 Southwestern Virginia Coal Mining Women's Support Team
 Spina Bifida Association
 Stepfamily Association
 Texas Coalition for Nontraditional Professions
 Union of American Hebrew Congregations
 Union of Flight Attendants/IAM
 United Auto Workers
 United Cerebral Palsy Association, Inc.
 United Church Board for Homeland Ministries
 United Church of Christ, Office for Church in Society
 United Electrical, Radio and Machine Workers of America
 United Food and Commercial Workers
 United Methodist Church, General Board of Church and Society
 United Mine Workers of America
 United States Catholic Conference
 United Steel Workers of America
 United Women Fire Fighters of New York
 Washington Council of Lawyers
 Western Kentucky Coal Mining Women's Support Team
 Wider Opportunities for Women, Inc.
 Women Employed
 Women in Communications, Inc.
 Women in the Fire Service
 Women Lawyers' Association of Michigan
 Women for Racial and Economic Equality
 Women on the Job
 Women to Women
 Women's Bar Association of D.C.
 Women's Center of Southeastern Connecticut
 YWCA of the USA, National Board

Chairman WILLIAMS. Mr. Michael Losey is the president of the Society for Human Resource Management, with offices, I think, across the Potomac in Alexandria.

You are kind to come by and accept our invitation to be here, and we look forward to your testimony. You may proceed.

Mr. LOSEY. It is our privilege, sir. Thank you very, very much.

Again, the Society is the leading voice of the human resource profession, representing the interests of more than 50,000 individual professional and student members from around the world.

Chairman Williams, this is a copy of our monthly magazine, our professional journal. I bring to your attention and would appreciate if you would enter into the record the "Family support: It's just good business," a theme reinforced by the Secretary of Labor, my associate here, and we have copies, if you could enter it into the record.

[The article follows:]

Family Support Makes Business Sense

by Michelle Neely Martinez

Demographic studies support the realization that meeting employees' needs with work and family programs is a business necessity.

Even in today's slow-growth economy, employers need to attract and retain qualified, productive employees—employees who need support to balance their work and family responsibilities.

A leader in the work and family or "work-life" arena is SAS Institute, a 1,700-employee computer software developer in Cary, N.C., that offers a myriad of programs ranging from free, on-site Montessori child care to nutritious take-home dinners. Human Resource Director David Russo attributes the company's low employee-turnover rates to work and family initiatives.

Far below the computer industry average of approximately 20 percent, the company's turnover rate is about 5.9 percent.

"Look at your workforce and realize you are looking at a workforce that is more female, more dual-career family and more socially dependent on the workplace than ever before," says Russo. "When companies are willing to recognize that blood is thicker than water, it shows employees that their employer really cares about them—and that galvanizes loyalty."

"Even with the current economic picture, you have to look at the demographics of the workforce and realize that they are not the same," says Loretta Rieman, work and family specialist for the *St. Petersburg Times* which employs 3,500 people. "Increasingly, there are more women and dual-income families. For employers, it is a reality that work and family are not separate anymore, because there is no longer someone at home taking care of family issues."

Michelle Neely Martinez is senior editor of HRMagazine.

Rieman admits that it has been more difficult to accommodate employee needs during a weak economy: "We're in a no-growth pattern; it is easier when you are in a growth mode. A challenge for managers is to try to accommodate staff requests when there are not as many options. Luckily, we are doing it, but it is not as easy."

"What large and small companies have in common is that people are your greatest asset,"

ductivity, and boosting employee morale is a byproduct."

Bottom-line issues

Comparing work-life programs to the menu of benefits and programs offered to IBM employees, Childs says, "When costing them (work-life programs) out per employee, they are the least expensive. We have not been able to put a dollar value on them in terms of cost



Loretta Rieman, standing, talks with employees about community elder-care resources.

says Ted Childs, director of workforce diversity programs for Workforce Solutions Co., an HR service company of IBM Corp. "More and more people are troubled by child-care and elder-care issues. Your people are not immune to these issues."

IBM offers programs ranging from leaves of absence to resource and referral services for approximately 186,000 employees. Most recently, the company took part in forming the American Business Collaboration for Quality Dependent Care (see CEOs Team Up).

Referring to a weak economy and the growth of work and family programs, Childs says, "There is no correlation between the two. Reducing your workforce is not the same as going out of business. If we assume that we are in the business of productivity, such initiatives must be part of the HR strategy. Work and personal-life balancing programs produce pro-

savings, but based on employee surveys—their responses, usage and appreciation—we believe they are low-cost with high-yield."

For Rieman, measuring the cost effectiveness of some programs can be easy. Recognized along with IBM and the SAS Institute in *Working Mother's* 1992 "100 Best Companies for Working Mothers," the *St. Petersburg Times*, a subsidiary of Times Publishing, provides employees with subsidized child care, flexible work schedules, family leave, job sharing, and resource and referral services.

One of the newspaper's most recent employee benefits is the company's sick-care program. The company networked with a local hospital and other local employers such as Honeywell to contract for the service. When an employee's child is sick, the child can be cared for at a local hospital. The employer and

PHOTO COURTESY OF ST. PETERSBURG TIMES

employee each pay \$2.50 per hour for the care.

Costs of this service can be measured, says Rieman. "Productivity is the hourly wage times the number of hours worked. For every dollar the company spends on the sick-care program, we save \$3.65."

The cost savings represents the time that would have been lost if the employee stayed

home to care for the child.

"We don't get into detailed cost analysis," says SAS Institute's Russo. "We do things like this (work-life programs) because it keeps our employees from having to risk careers, and it keeps company managers from playing favorites. Also, we want consistency in management instead of 'black-market' benefits, where one manager plays hardball while another is too liberal."

To determine what types of programs should be offered, Russo considers three factors:

1. What is good for the company?
2. What makes common sense for management and the people affected?
3. How much does it really hurt the company in terms of staffing and finances.

When asked what advice he would give to organizations interested in starting work-life programs, Russo says, "It's better to be proactive than reactive. When you are proactive you have choices, but the reactive choices are limited."

Services increase

According to the respondents of the 1992 "SHRM Work and Family Survey Report," the percentage of organizations providing child-care services has grown almost threefold in the past four years. In 1988, 10 percent of respondents said that they provided child-care services; in 1992, the figure rose to 29 percent.

Yet, according to the report, almost three out of four small-company respondents say that they are not involved in providing child-care services.

In the same SHRM survey, the percentage of organizations providing care for elderly or disabled family members is less than half of those providing some type of child-care service.

For small employers, *St. Petersburg Times's* Rieman says that a work and family program—even if it starts with speakers—can cost no more than a phone call and a meeting room. She says that providers in the community can offer lunchtime seminars and workshops that are helpful. Another popular and inexpensive benefit is reference and referral services.

"Employees do not want you to take away parental responsibility, they

Survey Calculates Family Leave Costs

Work and family issues have become politically charged, especially now as the nation's government switches to a Democratic administration. With mandated family leave at the forefront of these issues, employers may likely see some new rules in the HR management area. But whether family leave is mandated or not, employers are more interested in how family leave affects the workplace.

Generally defined, family leave begins when a supervisor learns that a subordinate is pregnant or adopting a child, and ends when the employee is assimilated back into the workforce. According to a compilation of studies in the 1992 report, "Parental Leave and Productivity," published by the Families and Work Institute, the five types of costs associated with managing a parental (or family) leave are categorized as follows:

1. **Replacement leave.** Changes in absenteeism and productivity of the leave taker and co-workers.

2. **Planning and training.** Planning the leave and training any potential replacements.

3. **During leave.** Disability pay, out-of-pocket expenses for the position, co-workers, supervisor and subordinates, changes in customer relations.

4. **Post-leave strategy.** Incremental costs to the use of a temporary, part-time or permanent replacement, overtime work and paying someone having the work done at home.

5. **After leave.** Retraining the

leave taker; reduced productivity during the learning curve period or turnover costs if an employee did not return or left soon after returning.

One of the five surveys included in this report found that the average cost of parental leave was 32 percent of annual salary; 39 percent for management and 28 percent for nonmanagement. The most frequent leave cost ranged from 11 to 20 percent of annual salary, with four out of 10 cases falling into this range. Two extreme values caused an inflated average.

Factors that contribute to higher leave costs depend on specific characteristics of the leave taker, such as job level, performance level, medical complications, age and tenure. Overall, parental leave was found to be less expensive than replacing the employee permanently, which was 75 percent of salary.

Retention of female employees following childbirth is a central concern of employers. The report found that two-thirds of the women were working again by the time their infants were six months old. More than a third went back to work within eight weeks and half were working again by three months. Managerial/professional women (75 percent) were more likely to return to their previous employers than service and blue-collar workers (54 percent), with other white-collar workers falling in the middle (59 percent).

For more information on the survey findings, contact the Families and Work Institute in New York, (212) 465-2044.



The Time Warner emergency-day-care center opened in Manhattan in fall 1992. The specially designed 2,100 ft. facility features large building-block shapes in bright colors that encourage flexible room arrangements for various ages of children.

often just need access to information."

Karol Rose, director of work-family initiatives and training at Time Warner Inc., says, "It's actually much easier to start work and family programs in smaller companies than larger ones. I guide divisions, but they do different things."

Rose agrees that lunchtime sessions are a low-cost way of getting on the work-life bandwagon. Besides other numerous Time Warner work and family initiatives, she provides 50 lunchtime sessions annually that deal mainly with parenting.

Though elder care was just as important from the start of the *St. Petersburg Times* program, Rieman points out that elder care is a more complex and crisis-oriented issue. She says the need for child care is much more predictable. Elder-care resource and referral services are popular, but employer-provided facilities are not as realistic for most businesses.

Often the best thing a company can do is to support the local network rather than trying to start something new.

Flexibility important

On-site child care is not always the best solution to balance personal and professional responsibility. For example, out of 17 employee benefits offered by American Savings Bank in Stockton, Calif., employees ranked the com-

pany's on-site child-care center as last in importance. Since approximately 70 percent of the employees were female, company officials were quite surprised. But because of its location, the center serves only 900 of the company's 4,000 employees.

Interestingly, AllState Insurance found that its employees had different needs depending on where they were located. Employees in Charlotte, N.C., needed more day-care slots, but the last thing employees in Los Angeles wanted was on-site child-care, which would require them to commute with children.

Overall, the most beneficial offering for employees is flexibility. In The Conference Board study, "Linking Work-family Issues to the Bottom Line," employees in the eight companies reviewed indicated that increased flexibility in work hours was their most popular option.

Employees in six of the eight firms reported flexible work arrangements as a top priority. The second most popular request was revision of the sick-time policy to allow time off for a sick family member. The on- or near-site child-care center was the third preference of respondents.

At little or no cost, flexibility can improve employee performance and attitudes, says

PHOTO: COURTESY OF TIME WARNER INC.

IBM's Childs. "When employees have more control over how they deliver their work hours, they are more productive and have higher morale."

Time Warner's Rose describes flexibility using a number of factors: "Work at home, compressed work week, job share—that's flexibility."

But, she warns, flexibility needs to work for employees *and* management. "The safety net is that it has to work for the company. Senior management has to say 'This is good.'"

Mid-level barrier

Experts agree that work-life programs can only be established when top management is committed to the effort. But in many cases, middle managers become barriers to work-life programs such as flexible work hours and time off.

According to The Conference Board's "Strategies for Promoting a Work-Family Agenda" study, when the CEO was committed to the issues, there was no guarantee that mid-level managerial commitment followed. Even in organizations that had successfully im-

plemented work and family programs, there were a fair number of departments that remained indifferent or hostile to the subject. In the same study, the CEO was seen as the initiator of cultural change.

Middle managers need to be convinced of the issue's importance, understand how it relates to the company's objectives and bottom line, then understand what tools and programs are available. One way to increase management participation is to conduct awareness and sensitivity training—a strategic step that most family-friendly organizations have taken.

But, according to "Educating Managers," another report released by The Conference Board in March 1992, employee expectations have been just as important as educational efforts and the following external influences:

- Media attention and broad cultural changes have been the biggest factors in changing awareness.
- Direct experience with employees' work-family conflicts is the best teacher.
- The reality of dealing with the issues at a grass-roots level causes most changes.

CEOs Team Up To Meet Employee Needs

Known as the largest corporate collaboration of its kind and growing, 137 businesses recently formed the American Business Collaboration for Quality Dependent Care. The group's mission is to expand the supply of and improve the quality of dependent-care services in the communities where its employees live and work.

Initially the brainchild of IBM Corp., the \$25.4 million project is based on this principle: "We can accomplish more by working together than by working alone." An IBM spokesperson stressed that the collaboration is thoroughly a team effort, with 11 companies serving in leadership and coordination roles at the national level.

Though the group will target and design programs to fit the members' workforce needs, they will also support existing community programs. During the preliminary stages, they assessed the supply and quality of dependent care in each participating

community, taking into consideration employee demographics, workplace issues and dependent-care needs. Then, participating companies formulated and reviewed community strategies. Finally, strategies were refined based on feedback from member companies and on the level of available funding.

For more information about the American Business Collaboration for Quality Dependent Care, contact Work/Family Directions at (800) 253-5264, extension 4283. Work/Family Directions is the consulting firm hired by the group to assist in such areas as needs assessment, program design and management, provider selection and evaluation, and quality control. If your organization is interested in joining the cooperative, Work/Family Directions can advise you of projects established in your geographic area.

Corporate culture's role

Employees and managers at the *St. Petersburg Times* start negotiating early for something like parental leave time to avoid conflicts in scheduling and to find feasible ways to handle absences.

To ensure that employees have correct information about the company's leave policy pertaining to birth or adoption, the newspaper offers a program called the expectant parent registry. Through the registry, employees receive benefit information, literature that helps prepare them for negotiating leave with their managers, and other materials that help them prepare for their new roles. Rieman says the registry also sends the message that "this is a supportive work environment."

The employee's manager determines the parameters of each leave period and must give the request serious attention.

"If at all possible, the answer by the manager should be yes, but if it is not possible, the manager must explain why it is not possible and say, 'approach me again at a later time,'" says Rieman. "If a manager has a problem accommodating an employee's leave

request, the manager must talk to a staff representative (human resources)."

Work and family professionals like Rieman see themselves as the bridge builders, creators, model builders and networkers solidifying the relationships between the workplace and workforce. For these professionals, the balance between work and family is a very real bottom-line business issue.

For organizations striving to be family friendly, Rieman suggests looking at the expertise and services within the local community. "A really practical way to get involved is to work with what exists. I would like to see more relationships between companies and the local community. It is not an unusual situation and companies are realizing this."

"Singles backlash"

One of the most common questions raised by human resource professionals is how do you avoid the "singles backlash"—the feeling among employees without children or elder-care responsibilities that they are being cheated out of benefits? Single employees often feel that managers make assumptions that single employees do not have lives outside of work, therefore, single employees can "carry the load."

When determining program structure, companies must determine their specific focus. For example, will programs focus on work and family or work and personal life? There is a difference between the two and the nature of the program needs to be communicated clearly and consistently.

SAS Institute policies concentrate on work and family. Early on, the company made a decision to provide child care for all employees. When employees commented that their children were grown or that they did not have children, the company responded that all employees were eligible. The key word is *eligibility*, says Russo. The company offered and communicated the benefit to everyone, even though all employees would not have a need to participate.

"At the *St. Petersburg Times*, we've tried to steer the program focus to work and personal life," says Rieman. "In our policies, we try to accommodate personal wishes such as school, for example, allowing flexibility in work hours so employees can attend a class that is only offered during a time that conflicts with work. We still lean more toward accommodating the family issue."

When trying to accommodate personal, nonfamily needs, Rieman stresses that a manager may have to say "no," but the manager

needs to leave the door open, so the employee feels comfortable approaching the supervisor at another time.

"We take the life-cycle approach to employees," she says. "We explain to single employees that the company may be accommodating a co-worker now, but explain that down the road, they may need work flexibility due to family needs. If you frame the benefit like that, employees see the benefit almost like insurance that gives them employer support in the future." ■

David Russo, left, and employees visit at SAS's child-care facility.



The Work and Family Manager

Three years ago *HRMagazine* (August 1990) featured six work and family managers discussing the job's function in their respective organizations. Since then, there has been a rapid increase in managers who raise awareness, develop work-life policies and implement programs.

According to "The Emerging Role of the Work Family Manager," a study conducted by The Conference Board, this type of job is usually located in the human resource department and is compensated at the middle-management level. Nearly half of the managers in the study report to an HR executive with generalist responsibilities.

PHOTO: CHIP HENDERSON

Mr. LOSEY. The vast majority of our membership, practicing practitioners, believe that leaves are an enlightened and appropriate thing in today's workforce and workplace. They are overwhelmingly in favor of this. The problem is the issue of mandate, the cookie-cutter, as others have referenced here today.

But to get to the point, it will be our members who will be charged with implementing what we will decide here. For these reasons, we believe that we are uniquely qualified to provide the perspective that you have invited us to do, and, in fact, we have an obligation to do so, and particularly on some of the practical and administrative issues. So we would like to get right to that.

This issue has been in front of the Congress for over eight years. That reflects some of the longstanding sensitivities to this. But our Nation, admittedly, has also gone through substantial change. We have seen changes in our workforce, change in employment practices; we now have a major political change; yes, we have a new President; yes, we have a new Congress; yes, we have a new environment on Capitol Hill; and yes, we recognize this legislation will undoubtedly be enacted.

This afternoon, we offer our input. There is not enough time to cover all the concerns that we have. Several have been mentioned—the preemption of existing State laws, the notice requirement, the definition of “serious health condition,” the intermittent leave and how that works. We invite the committee to see our fuller preparation in the report that we have submitted.

What I would like to do, at the privilege of the committee, is highlight just two issues, and we think serious attention should be given to ensure that, if enacted, a fair and proper administration of the Family and Medical Leave Act will be achieved.

The first issue: We were so pleased to hear this morning that Secretary Reich is now seriously considering and apparently is in favor of changing the Department of Labor's interpretation and enforcement of the Fair Labor Standards Act. This is testimony we have given on numerous occasions.

What the problem is—if I could just take a moment—is, under the Fair Labor Standards Act, employers are prohibited from granting partial day unpaid absences to exempt employees, and this is especially true for those who may have exhausted any accrued vacation or other accrued time off that they could utilize for such a purpose. The penalty is extremely harsh. The penalty, in fact, reverts to nonexempt status regardless of the salary of the individual—\$100,000 a year, \$48 an hour. It subjects such an executive to back-pay obligations and substantial penalties.

Yet the bill we consider requires employers to grant such partial day absences with the suggestion, and no suggestion in fact, that they are to be paid. As a result of the interpretation of the Department of Labor, constructively, employers must pay exempt, or what we would call salaried, employees when nonexempt, or the wage earner, will probably not be paid, and I can guarantee you, there are thousands of companies who do not want to create this inequity. For purposes of internal equity, they will wish to be able to reduce the compensation in accordance with the employee agreement when we have the requirement for extended time off the job.

So we urge Congress to reverse this Department of Labor interpretation and, in fact, extend it beyond what we understand is the Senate amendment, because that is limited to the 12 weeks, and our anticipation is that the requirement for three hours off in an afternoon by someone is more likely after the severe situation which caused the 12 weeks occurs—continuing medical treatment for a child, maybe a Wednesday afternoon two or three hours—and if the 12 weeks has expired but it is still for the same intended purpose, why should the employer not have the opportunity to work out with the employee, at frequently the employee's request, to have that granted unpaid?

Now the second issue, quickly, relates to the provision requiring employers to provide health insurance coverage to the leave. As presently structured, we have great concern about the potential for abuse.

Under COBRA, as you know, employees who voluntarily or involuntarily terminate are entitled to continuing health insurance from their employer for up to 18 months at the employer's cost plus a 2 percent administrative fee. As you also know, the cost of health care has become a heavy burden for our Nation's companies and is one of our Nation's most serious problems.

When that burden via COBRA is transferred to the employee, to terminating employees, it is overwhelming to have to pay for. Now our fear is that extension of health care at the employer's expense, primarily the employer's expense, under this proposed legislation will tempt—and, I repeat—will tempt even the most well-meaning employer who plans to terminate and otherwise would have been burdened with the cost of COBRA to recharacterize the nature of termination and recharacterize it to a family or medical leave. COBRA is burdensome now, I am sure your constituents have advised you.

May I give you one quick example? We are a nonprofit professional society. We have 86 employees. Last year, 1992, we had six employees on COBRA. They paid us \$10,000 for premiums; we paid \$82,000 in claims. We want to provide health care to our employees and their family members. COBRA can't stand much more.

Now, the good news is, there is a simple solution to this. We don't know how in this legislation it got stipulated that COBRA starts after the leave. It is the accepted practice of most companies when you go on leave, that is a qualifying event under COBRA, so the clock starts ticking. That is our simple request, to move it back to that. What is the net effect of that? If the employee requests 12 weeks, takes 12 weeks, returns to work after 12 weeks, COBRA is academic because they are back to work and the Act has acted as intended.

However, if the employee does not come back to work, the employee has had three months, and then the employee starts the clock for 18 months. The employee under this provision, the way it is crafted, gets 21 months. The employee who is laid off—and Heaven only knows we have had thousands in that class, through no fault of their own—gets how much? Eighteen months.

Our proposal is, if after the extension of the initial 12 weeks the employee, for any reason, does not come back to work, that the employee should be put in the same class as others who are in a ter-

minating situation in relationship to COBRA. In other words, in the law it says, as proposed, if you don't come back to work, the company can chase you. Only the most aggressive employer is going to use that provision. But if you said you are not coming back to work, then let's put you in equity with the other employees who terminated in respect to COBRA, and you pay the first three months. If you don't want to pay the first three months, then you got it from us; maybe we chase you for it, maybe we don't, but you don't go forward for COBRA, you don't get the additional 15 months. That works. It would be fair.

Now, I hope we are not creating a situation where someone could, if you just followed this simple example, be off 12 weeks, receive the company-provided health insurance, tell the employer they were not coming back to work, refuse to pay for the three months, yet insist on the entitlement for 18 additional months and somehow find the way to pay for it. That is not going to be right, it is not going to be fair.

On behalf of the Society, I urge you to address these practical matters. We stand ready to work with staff members and anyone else. We think this is—I don't want to suggest in any way a minor change, but it is a doable change. It is not late. We have been working with the Congress for eight years on this issue. This is not Johnny Come Lately. We plead that this be taken into serious consideration.

Thank you very much, sir.

[The prepared statement of Mr. Losey follows:]

TESTIMONY OF MICHAEL R. LOSEY, SPHR

Dear Mr. Chairman:

Good morning. My name is Mike Losey, and I am President and CEO of the Society for Human Resource Management (SHRM). I am pleased to be here today to present testimony on behalf of the Society on the subject of family and medical leave legislation. SHRM is the leading voice of the human resource profession, representing the interests of more than 50,000 individual professional and student members from around the world. SHRM provides its membership with education and information services, conferences and seminars, government and media representation, and publications that equip human resource professionals to become leaders and decision makers within their organizations.

As you know, the family and medical leave issue has been before Congress for the last eight years. Throughout that time, SHRM has expressed concerns over specific provisions of the legislation. We have also expressed our concern that government mandates of workforce policies which were previously arranged between employers and employees will result in administrative, statutory and competitiveness challenges. Throughout this long debate on this issue, our nation has experienced changes. We have witnessed changes in the composition of the workforce, changes in employment practices and, now, even political change.

Changes in workforce demographics and employment practices are reflected in SHRM's 1992 Work and Family Report, which found that over the last four years, the implementation of new and creative employee benefits designed to meet the work and family needs of employees has dramatically increased. For example, we found that the percentage of companies providing child care services has grown almost threefold over the past four years, and overall, 6 in 10 companies now provide part-time work options, with nearly as many providing flextime. In addition, 18% offer work at home programs, 27% offer job sharing and 23% offer compressed work weeks. In 1988 and again in 1992, our surveys showed that the majority of SHRM members supported family and medical leave as a benefit, but that they did not endorse a federal mandate. The majority of our members still would prefer to design work and family benefits themselves versus a one-size-fits-all federal mandate.

In addition to new workforce demographics and practices--as of this week--we have a new President, a new Congress, and a new environment on Capitol Hill. We recognize that this legislation is likely to become enacted shortly. On behalf of our members, the professionals who will be charged with implementing this proposal should it become law, we feel that we must continue to offer recommendations for addressing some of the practical and administrative concerns we have with the legislation. Although companies are precluded from joining SHRM, SHRM professional

members are employed in companies and other organizations who employ almost 80 million employees. It is for these reasons we believe that SHRM is not only uniquely qualified to address specifics within the legislation but has an obligation to do so. We are hopeful that there will still be an opportunity to address some of the critical issues at hand before enactment. Accordingly, we urge you to make the following changes to provide for the fair and proper administration of the Family and Medical Leave Act:

Pre-emption of State Laws: If enacted, the Family and Medical Leave Act would not provide a national uniform standard. The legislation would exacerbate the confusion which already exists with the complex patchwork of state and local family leave statutes. In cases where existing state and new federal family and medical leave requirements or definitions conflict, there will be tremendous confusion over which provisions of which law take precedence.

Notice: The bill provides that an employee is required to give thirty days of advanced notice if possible. Even if the employer could prove that an employee did not comply with the notice requirements of the bill, it is unclear what recourse, if any, an employer would have. As written, the bill may encourage situations where an employee feels a greater entitlement to leave than an obligation to inform the employer of the anticipated

absence. The result will be an unnecessary impairment of an employer's business operations.

Impact of the FLSA: Under the Department of Labor's interpretation and enforcement of the Fair Labor Standards Act (FLSA), private employers are prohibited from granting partial day unpaid absences to exempt employees who have exhausted their available leave, without incurring substantial penalties. Yet under the Family and Medical Leave Act, employers will be required to grant such partial day absences.

We urge the Congress to reverse this Department of Labor interpretation, and to permit employers the option to provide unpaid partial day leave to an exempt employee, once the employee has exhausted his or her available leave. Moreover, there is a need for retroactive relief for employers who have voluntarily offered partial day absences to such employees. We believe that the correction needs to go beyond situations covered under the Family and Medical Leave Act. A broader remedy will be useful for the following reasons:

- o The FLSA requirements still affect employers not covered by the bill (employers with fewer than 50 employees).

o A narrow remedy would not address the situation where an employer would like to grant unpaid leave to exempt employees for reasons not covered under the family and medical leave act (e.g., an employer would like to allow a partial day's absence for a parent to check on a child, but the child is not seriously ill as defined by the legislation, or would like to provide an unpaid leave as a reasonable accommodation to a person with a disability).

o A narrow fix would not cover situations where the employee has exhausted 12 weeks of leave under the bill and the employer would like to continue to grant unpaid leave on a partial day basis.

o A narrow fix would not cover other situations where for purposes of equity an employer wishes to ensure that exempt employees are not inadvertently assured a paid leave status for absences of less than a day when non-exempt employees will have no such provision as a result of the application of the FLSA.

Serious Health Condition: Under the Family and Medical Leave Act leave must be provided in where there is a "serious health condition". "Serious health condition" needs to be better defined in order to prevent employee abuse. Any condition

requiring "ongoing medical supervision" would qualify as a "serious health condition" under the bill. We urge you to tighten up the language so that only those employees who are truly seriously ill or disabled or are taking care of a seriously ill or disabled family member who requires personal and close medical supervision are entitled to the protections of the bill.

Intermittent Leave: The bill would permit employees to take leave on an intermittent basis: a day or even an hour at a time. Coupled with a vague definition of serious health condition, this provision creates a great likelihood of administrative difficulty and employee abuse.

Health Care Extension; Potential for Abuse: Although extending health insurance to employees on leave on the same basis as provided to current employees may be a worthwhile employer investment in retaining employees in a competitive environment (versus recruitment, orientation and training of replacement as the alternative), as designed, this legislative provision offers opportunity for abuse.

Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), employees who voluntarily or involuntarily terminate employment are entitled to purchase continued insurance coverage from their former employer for 18 months. Under COBRA, the total cost (plus a administrative fee) is borne by the employee.

Extension of health care at the employers' expense under the proposed family and medical leave legislation will tempt employees who would otherwise be burdened with the costs of COBRA health care continuation to recharacterize their absence as a family or medical leave, rather than termination. The employer will be burdened not only with the cost of health care benefits but also with an extended disruption of orderly business conditions because they are unaware of the fact that the employee will not return and will have no opportunity to fill the vacancy.

The bill states that employers will be able to recapture health insurance premiums paid during the leave only if the employee does not return to work. From an employer's standpoint the bill is so restrictive that it ensures that any such employee is provided protection against repayment from all but the most aggressive of employers. In addition to the employer who is disadvantaged the injustice is also inflicted on the fellow employee who chooses not to participate in such a deception and is personally burdened with full COBRA costs.

A simple solution exists to protect against this possible abuse. We urge you to include statutory language which permits an employer to consider leave taken under the Family and Medical Leave Act as a "qualifying event" under (COBRA). This would clarify that an employer may start the COBRA eligibility date at the beginning of the leave period. If the employee returns,

COBRA would not be needed by the employee; the employer has a reinstated valued employee who has been entitled to continued insurance coverage. However, if the employee does not return--for any reason--the employee would be placed in the same class as other employees who leave an employer on a permanent basis with respect to COBRA. This means that the employee would be required to reimburse the employer for the COBRA cost of health care during the period of the leave in order to be eligible for the remaining period of their COBRA eligibility. To do otherwise only encourages some to take a free ride on the backs of others.

Conclusion

On behalf of SHRM, I urge you to address the above provisions in order to reduce confusion and difficulty in the administration of the Family and Medical Leave Act before enactment. SHRM's staff and dedicated human resource professionals stand ready to assist you toward that goal. I would be happy to answer any questions you might have.

Chairman WILLIAMS. Thank you. Our thanks to both of you.

Both of your statements will be placed in their entirety in the record along with the material, Mr. Losey, that you requested we place in the hearing record.

Mr. Losey, what would you do with that employee who, although ill and certified, finds that their illness does not allow them to return to work? How would you protect that person's insurance?

Mr. LOSEY. If the employee was ill, was off for three months, because of the disability or illness, they would get all the customary and usual benefits that the—whose employee status would be extended. That could be continuation of health insurance and so forth during the period of disability. Many companies have such policies.

Let's say they don't. So then you expire the three-month period. The employee says, "I cannot come back to work." The employer says, "You are in a key position. Thank you very much. I've held it, but I can't hold it forever. We are very sorry about your physical condition. We will assist you in any way you want. You have COBRA now for 15 more months." That is the answer.

Chairman WILLIAMS. Does that person not then go back with coverage to the date they left?

Mr. LOSEY. We would suggest that the date they left, for purposes of COBRA, be a qualifying event. That is when the COBRA clock starts. What you are doing is having the employer pay for the first three months. That already is a substantial benefit that other people who terminate do not have, of course.

Chairman WILLIAMS. We have also, as the Secretary indicated, been talking with the Secretary and the folks down at the Department about the first matter you mentioned with regard to the Fair Labor Standards Act. We may have a germaneness problem in trying to amend the Act beyond the purpose—that is, amending the Fair Labor Standards Act beyond the purpose that is before us in the Family and Medical Leave Act, I am not sure that we would be within our rules in making the amendment as broad as you are suggesting, but we do recognize the problem, have for a couple of weeks or so now, and are going to try to—

Mr. LOSEY. Well, the important thing is the Secretary of Labor's testimony this morning, and we will work with the Department of Labor.

Chairman WILLIAMS. Yes.

Mr. LOSEY. Thank you very much.

Chairman WILLIAMS. Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I do have a question, and, by the way, I hope we can work this out with respect to the COBRA and the intermittent time, but I am not quite sure what you have said about it. You said that the date they left would be the qualifying event. Would they then have to reimburse for that three-month period?

Mr. LOSEY. For the first three months they would be on leave. The company would extend. The employee would only have to pay that amount they would have paid as an employee.

Mrs. ROUKEMA. We will have to look at that. I am with the Chairman on that. I am not quite sure.

Chairman WILLIAMS. If the gentlelady would yield.

Mrs. ROUKEMA. Yes.

Chairman WILLIAMS. That is what is in the bill now. What the gentleman is just suggesting is what is in that bill.

Mr. LOSEY. No. What we are saying is, at the end of the expiration of the three months, if the employee does not come back to work, the bill says, "Well, now do you want COBRA?" They have 18 months from then.

Mrs. ROUKEMA. But this is the understanding: They have made a good faith effort, but their physical condition does not permit them to come back. We will have to look at that. It is a legitimate issue to raise, but I don't think we are talking about the same things here necessarily, but I would like to work with you if there is an outstanding problem, and, as you have said, the Secretary has already recognized some degree of cooperation.

Mr. LOSEY. It preempts the opportunity for abuse because then there is no incentive for an employee to—

Mrs. ROUKEMA. Well, speaking now as a Republican with strong business community support over 12 years, I think the business community has just greatly exaggerated this potential for abuse. But we will work with you on that. I think it is legitimate.

What I did not understand—maybe it's me—I did not understand, and I would like to, your description of the problems with intermittent leave because I think this is very important. If there is any way we can accommodate it, I want to accommodate it, because I personally worked to put in the requirements here on the intermittent leave.

But if you could give us further definition and a resolution as to how you would resolve the problem without giving up the concept of intermittent leave in the bill, I would greatly appreciate it, but I didn't understand from your description what the problem was.

Mr. LOSEY. Okay. Intermittent leave is presumably less than a day; it could be an hour or a couple of hours. From an employer's standpoint, I would much rather have an employee take care of necessary work and family issues an hour a day than over 12 weeks—the burden on the employer. So there is legitimate use of intermittent leave.

The question is, what is that going to be for? A dentist's appointment? What is the obligation to maintain the orderly circumstances of the company? And then the most important issue from the exempt standpoint was the docking. You see, so many of our members—56 percent of our members come from a company of smaller than 1,000 people, 45 smaller than 500. They are small groups that are having great difficulty, and what they say is, "We have got well-meaning employees who want a little bit of time off, and we are willing to give it," and the employee is petitioning for, "I can just have a couple of hours off; I don't expect to be paid," and the Department of Labor says you must pay him.

Mrs. ROUKEMA. That is the question of jurisdiction that the Secretary referred to, the pay docking issue. But you are not criticizing the requirements in the bill because we even went beyond what our bill in the House said with Senator Bond's amendments in the Senate to clear up, at business's request, any questions with respect to how the intermittent leave would operate, even so far as to requiring a 30-day notification.

What we are talking about here in most cases would be something like chemotherapy, and that schedule can be worked out. So I don't think we have a problem there. At least I hope not, because we have worked long and hard with the business community on that issue. But if it is the pay docking, we may have to visit that in that context.

Mr. LOSEY. The only other extenuating circumstance is the definition of "serious health condition" which would justify the intermittent leave, and we would suggest, given time, that that be reviewed.

Mrs. ROUKEMA. You are not satisfied with the certification of a doctor or medical personnel in consultation with the—with a 30-day notice?

Mr. LOSEY. What does it say? It says "physician or osteopath or a person designated by the Department of Labor." We don't know what gives the Department of Labor the wealth of information, and we don't know who that is going to be.

Mrs. ROUKEMA. I am with you on that, and we on the House side did not accept that broad interpretation in the last Congress, so we will see what we can do on that subject. But if that is the issue, then I think maybe we can accommodate.

I do have one question for Judith Lichtman and Donna Lenhoff, and I do appreciate their being here.

How do you respond to the allegations—and I would say "red herring," except it dates me back to the early Cold War. Of course, I was too young to remember it, but I am well read.

But the red herring issue of some that say this creates discrimination against women. Would you please address yourself to that assertion and false allegation?

Ms. LICHTMAN. I would be happy to do so, and, at the same time, begging your deference, I would also like to try to respond to some of Mr. Losey's concerns as well, as he articulated them.

You know, women and men workers who don't have job protection today are discriminated against, because without that job description they lose jobs, and the notion that the existing anti-discrimination laws, like Title VII of the 1964 Civil Rights Act, won't kick in to protect employers, I would submit to you, those few employers who would discriminate against people who take this minimum standard of job protection, to me, is fairly ludicrous.

It is not as if it doesn't cost this Nation a great deal of money to not provide this minimum benefit, because it does. Women and men today are discriminated against because they don't have the job protections and they are thrown off their jobs, and I don't know what could be more real in terms of worker discrimination.

Let me talk a little bit about what I believe are Mr. Losey's concerns with respect to when and how COBRA kicks in. In the last Congress, you all were very concerned about this very issue, and indeed you added new provisions which allowed employers to essentially recapture the health insurance payments from employees who could not come back unless they had a good cause exemption, and I would submit to you that you have addressed those concerns, and unless you address them in the way you already have, in essence—and your question, Congresswoman, goes exactly to the

heart of the matter—you are really asking people who are on unpaid leave to pay for their health insurance.

The other point that Mr. Losey raises about docking—I understood and would be prepared to be corrected that what Secretary Reich said was that he understood fixing the quote/unquote docking problem which affects salaried employees needs to be done in the context of this bill, Family and Medical Leave, and on the Senate side there is a provision for fixing this problem in the context of this piece of legislation, not going much more broadly and looking at the Fair Labor Standards Act, and I would commend your attention to the provisions that are now in the marked-up version of the Senate bill, because there may be a quite easy way, given your jurisdiction, to address those quite real problems.

Finally, a point, I think, that goes back to your very early questions this morning about cafeteria plans and your quite right admonishment that we remember that this is a minimum labor standard, because I think those two points go hand in hand.

When you are talking about minimum standards like Social Security, Workmen's Compensation, occupational safety and health, child labor laws, and minimum wage, nobody talks about putting those into cafeteria plans, and what this is is that kind of minimum standard for families who are struggling to be responsible workers and family members. We are not talking about some benefit that would force women and men workers to trade off family leave for health insurance, for instance. If you put this in a cafeteria plan—and only 5 percent of American full-time workers are covered, even covered by cafeteria plans—you are forcing working families into very serious trade-offs.

And, very finally, I want to say as a matter of personal privilege, I wish that if you made all the suggestions that the Society of Human Resources personnel would like they would then support the bill, but I fear they may not.

Thank you.

Mrs. ROUKEMA. Thank you very much.

Shall I ask you the question? No—unless you want to answer it. If you want to answer it, go right ahead.

Mr. LOSEY. I will volunteer that answer. We are here at the invitation of the chair and the committee. We are indebted. This is our few minutes of privilege. We represent 53,000 people. We realize the law is going into effect, and we don't want to make some of the mistakes which have been made in the past when we were here telling you that COBRA was going to be 150 percent of premiums, of section 89 of the Immigration and Control Act which was going to have a reverse discrimination. We are a professional resource, and this is our Nation, and we here to help even in this late hour.

Mrs. ROUKEMA. Thank you. Thank you, Mr. Chairman. I thank both Ms. Lichtman and Mr. Losey.

Ms. LICHTMAN. Thank you.

Mr. LOSEY. Thank you.

Chairman WILLIAMS. And I wish to add my thanks. You have both been very helpful in this process through the years. We don't at all diminish or denigrate the concerns, Mr. Losey, of you and the Society. In fact, we are considering both of them and actively work-

ing to try to rectify one that you have brought before us and strongly considering the matter of COBRA as well.

So we appreciate your being here and working with us through the years and again this morning.

Mr. LOSEY. It is a privilege. Thank you.

Chairman WILLIAMS. Ms. Lichtman, you and your sidekick, Donna, have been stalwarts in this effort as well, and we are deeply appreciative of your leadership, as I know workers throughout America who are aware of your leadership on this issue are also appreciative.

Thank you both for being here. This hearing is adjourned.

[Whereupon, at 12:34 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

I would like to thank Congressman Williams and the other members of the Subcommittee on Labor-Management Relations for this opportunity to present the views of the Service Employees International Union (SEIU) on the Family and Medical Leave Act of 1993. SEIU's one million members appreciate your efforts to make 1993, at long last, the year that the United States finally joins the ranks of other industrialized countries with a national family policy—a minimum parental leave standard.

SEIU members work in the rapidly growing service industries where low wages and few benefits are increasingly the norm. We view parental leave as part of a package of decent minimum standards which will bring greater security and stability to America's working families.

Since the mid-eighties, SEIU has led the way in championing the work and family agenda at the bargaining table as well as in State houses and on Capitol Hill. We have negotiated new benefits to help our members cope with the work and family balancing act. But as a 1987 survey of our members revealed, family policies are sorely lacking in low-wage service industries. Consequently, we came to the conclusion that a bargaining solution—employer-by-employer—is not sufficient to guarantee minimum family benefits for all workers.

The dramatic economic changes of recent decades have led to a stagnation in real living standards. Working families have been saved from financial disaster by the increasing labor force participation of women. Yet families have been left to cope with the strain of balancing work and family responsibilities on their own. It is high time for the United States to take legislative action to bring our family policies up to the levels long taken for granted in other industrialized countries.

Our research has shown a clear need for the Family and Medical Leave Act. Most service workers don't get the minimum 12 weeks of unpaid leave this bill would provide. Less than a third of clerical workers, who are overwhelmingly female, get any family leave. Unionized service workers fare better. SEIU contracts have won three months or more of maternity leave benefits in 61 percent of private sector contracts covering 83 percent of SEIU private sector members. But only about a third of these contracts (covering only 10 percent of SEIU private sector workers) include job guarantees and only 8 percent of the contracts include continuation of employer contributions to health insurance plans.

Workers aged 55 and older are projected by the BLS to be the fastest growing sector of the workforce. These older workers in particular need the medical leave job protections of this bill. Older workers are twice as likely to miss work because of illness and have a harder time finding a new job at comparable pay if they become unemployed.

Once again, we hear from employer representatives that mandated unpaid leave would be financially burdensome and would automatically result in the reduction of other benefits desired by employees. The facts do not support this contention which rests only on an ideologically-motivated rejection of any expansion of the rights of working people. The Small Business Administration (SBA) has estimated the total annual cost to employers of family and medical leave to be about \$6.70 per covered employee. By comparison, the U.S. Chamber of Commerce estimated total annual costs of employee benefits at over \$13,100 per worker in 1991. Accordingly, the \$6.70 needed to cover unpaid family and medical leave will hardly be felt by employers.

SEIU's collective bargaining experience shows that the claim of a "squeeze on other benefits" resulting from this legislation is without foundation. SEIU is the largest union in California and has over 190,000 members in New York—two States that have temporary medical disability or minimal parental leave programs in place. In these States, even during the most difficult collective bargaining negotiations, employers have never asked for cutbacks in other benefits such as health insurance, sick leave, or pensions to pay for State mandated family and medical leave programs.

Rather than being too burdensome, a more apt criticism of the legislation is that it doesn't go far enough. The distinguished National Academy of Sciences' Panel on Child Care Policy has recommended that workers be provided a full year for parental leave. Compared to what the experts deem an appropriate period of time, the 12 weeks of unpaid leave mandated by this bill is quite minimal.

SEIU is the largest union of healthcare workers in North America. We are all too familiar with attempts to curtail the rights and benefits of healthcare workers with the argument that they are "critical personnel." Healthcare workers know from their daily experiences on the job the direct medical benefit to patients of support from loved ones. It is indeed twisted logic to argue that these same workers should

not be guaranteed the right to return to their jobs after taking time off to care for family members. In the face of chronic shortages of nurses, nurse aides and other direct care personnel, employers need to take steps to reduce turnover and retain qualified workers. According to GAO, a minimum family leave standard will likely "reduce job turnover and enhance average productivity" by retaining experienced, trained employees.

In my opinion, the coverage of this bill is broad enough to avoid employment discrimination against women of childbearing age. Remember that discrimination occurs in firing as well as in hiring. Under current law, employers may use the attendance disruption occasioned by family emergencies as a pretext to dismiss workers considered undesirable for reasons unrelated to work performance.

The guarantee of minimum job security contained in H.R. 1 is especially important to low wage workers. When employers claim they are more than willing to work something out with a valued employee, it implies that they are unwilling to accommodate those employees who may have good work records and long seniority but unluckily are readily replaced. Such workers are a majority and need the job security protection this bill offers.

Although some States have begun implementing their own parental leave policies, a coordinated national approach is needed. The Family and Medical Leave Act would ensure that workers throughout the Nation are afforded the same basic protection in caring for themselves and their families.

Simply put, this legislation would require employers to extend the hand of common decency to all their employees—without discrimination. SEIU will continue to devote its resources and energies to securing passage of the Family and Medical Leave Act of 1993.

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Assembly California Legislature

GWEN MOORE
ASSEMBLYWOMAN, FORTY-NINTH DISTRICT
MAJORITY WHIP

COMMITTEES:

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Governmental Efficiency,
and Economic Development
Education
Governmental Organization
Insurance
Televising the Assembly
Select Committee on the
Office of the State Board of
Equalization
Select Committee on
Equal Opportunity
Chairwoman



TESTIMONY OF
THE HONORABLE GWEN MOORE,
MEMBER, CALIFORNIA STATE ASSEMBLY
TO
THE U.S HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR,
SUBCOMMITTEE ON LABOR-MANAGEMENT
IN SUPPORT OF
HR 1, THE FAMILY AND MEDICAL LEAVE ACT
January 26, 1993

Mr. Chairman, and members of the Committee, I am Gwen Moore, a member of the California State Assembly since 1978, and author of California's family leave law enacted in 1991.

I wish to commend Representative Wendell Ford of Kentucky, your Committee and the Congress in the quest to write a uniform national policy governing family and medical leave for American working men and women.

Last year, we were saddened to learn that this legislation was vetoed by President Bush. Today, we look again to you, and to our new President to unlock the door to open a new passage of social justice for the American people.

Briefly, please let me provide the Committee some background information on the California experience with family leave.

Since 1984, the same year the Family and Medical Leave Act was first introduced in the Congress, I worked diligently along with interested parties to frame the statute that permits California workers to take time from work to care for their families without fear of job loss.

Our goal was to be fair to both employees and employers. We were seeking equity in charting a new course in public policy in view of the revolutionary reshaping of our economic and societal landscape during the past several decades.

I believe we succeeded.

The provisions of the California law are very similar to those in H.R. 1, the Family and Medical Leave Act. The California law relieves workers from having to choose between their jobs and their families. The law permits them to take up to four months of unpaid leave in a two-year period, and to return to the same or similar job at the end of the leave. The law also permits employees to participate in employer-sponsored health insurance programs during the leave. In addition, the measure protects employers from abuse and disruptions.

The California law exempts small businesses; it applies only to employers of 50 or more. The statute limits unpaid leave of up to four months in a two-year period to employees who have been on the job for one year or more. The law also provides for advance notice by employees when the need for leave is foreseeable, certification that a leave is warranted when a leave is based on a serious health condition, and scheduling of medical treatment to prevent disruption to employers' operations.

Today, nearly one-half of the nation's workers are women. Whether as single parents or members of traditional households, most women need to work to support their families. Working women are not able to devote the amount of time to traditional child care giving as those who do not work. In addition, the trend is for fathers to share more greatly in child rearing responsibilities. That is why family leave applies to both parents.

In millions of households, senior family members depend upon their working children for general support or care giving so they do not have to be shunted into expensive care facilities where their independence is reduced. All of us recognize that child and senior care is expensive and sometimes difficult to arrange. Care for the newly-born is especially expensive.

When a serious illness or the more welcome event of a birth or adoption occurs, the nation's workers need to be able to dedicate quality time to provide temporary care for their families. Currently, many people face enormous conflicts between their responsibilities to their employers and their families. Today, working men and women are severely challenged to balance these conflicts.

What has been the California experience with the new family leave law? By way of background, before I introduced the legislation, I studied enlightened companies, such as Pacific Bell, which had instituted their own family leave policies prior to being legally required to do so. We found that family leave is a morale booster. Any employer can tell you that happy workers are more productive.

Now that family leave has been afforded to millions of California workers, employers are learning to adjust. Change for some may be difficult, but others find it to be an ally. There were only a few complaints filed with the state by employers during the past year.

In contrast to these few complaints, there are studies that show that it is less expensive for employers to place experienced employees back on the job after a few weeks or months leave, rather than to keep up with the revolving door of training the inexperienced. Persons granted leave are more likely to return to their jobs as highly motivated and productive employees.

Relative to the legislation before you today, I highly recommend adoption of the provision that permits an employee to take extended leave beyond paid sick leave because of a personal illness. The protection this provision affords is a component missing from the laws of many states, including those, such as California, which have enacted family leave statutes.

While a number of states in addition to California have adopted family leave statutes, these laws lack uniformity. HR 1 would provide a basic federal standard that would apply to all employees it would cover in the United States. A nationwide policy has the benefit of establishing basic employee rights that transcend state boundaries. This also benefits employers throughout the country in that they would have a uniform standard on which to base their leave policies.

Enactment of the Family and Medical Leave Act will bring the United States into line with the other technologically advanced industrial nations. This new law will send a strong signal that this government values the family as the most important thread in the social and economic fabric of America.

President Clinton, in his Inaugural Address, declared: "We must provide for our nation the way a family provides for its children." That is, we must find ways to nurture strong families. The President echoed what we all know in our hearts: "We need each other. And we must care for one another."

What better place than to start with enactment of HR 1. You can make it possible for millions of Americans to provide a critical element of care within their families and for themselves without fear of losing their jobs.

I urge your support of HR 1.

Thank you.



National Federation of
Independent Business

SUBMITTED
STATEMENT

OF THE

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: House Subcommittee on Labor-Management Relations
House Education and Labor Committee

Subject: H.R. 1 -- Family and Medical Leave Act of 1993

Date: January 26, 1993

NFIB is a voluntary membership organization with over 600,000 small business owner members. NFIB's membership comes from all of the industrial and commercial categories and reflects the national small business community in its distribution among industries -- having approximately the same percentage of members in the construction industry, the manufacturing industry, wholesale, retail, etc., as exists in the national business profile. This distribution permits NFIB to accurately extrapolate its survey to the general small business community.

NFIB and small business owners support the concept of parental leave.

With today's own workforce and changing demographics, accommodating the needs of the employee is not only important to fostering good employee-employer relationships; it is also a competitive necessity.

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The Guardian of
Small Business

The Family and Medical Leave Act of 1993, H.R. 1, mandates the benefit package small business must offer to its employees, without accounting for the

unique nature of each business. This one-size-fits-all mandate will destroy the flexible small business leave arrangements currently in place. According to a 1991 Gallup Survey, 93% of small business owners contacted already offer some form of family and medical leave to their employees and 94% granted this last request for leave. However, if this legislation passes:

- * 45% of respondents will be less likely to hire young women;
- * 46% will be more likely to reduce the number of jobs for low skilled workers; and
- * 55% will be more likely to reduce or eliminate other employee benefits such as paid vacations, unpaid personal leave, and health insurance.

The results of a 1989 NFIB Mandate poll showed 84% of NFIB members opposed government mandated parental and medical leaves (9% favored and 7% were undecided). This opposition has remained constant since the introduction of the very first mandated parental and medical leave bill almost seven years ago.

In addition, both the SBA National Advisory Council and the small business owner participants on the National Advisory Council to the U.S. Senate Committee on Small Business have passed resolutions opposing enactment of mandated parental leave.

The small business community's strong and vocal opposition to mandated parental leave rests on three fundamental principles: one, that Congress is attempting to force its judgement onto the employer-employee relationship to a new

and unprecedented degree; two, that the Congress is attempting to define and regulate the individual need of the employee; and three that Congress is attempting to make employers legally responsible for the personal choices and circumstances of their employees. Throughout the country, leave packages are generally available to those who need them, but not at the expense of benefits desired by other employees. Small firms find that providing desired benefits is a competitive necessity in order to keep valued employees. The key is finding the appropriate balance between the needs of the employee and the demands of the business.

Small business owners fear that the precedent set by this legislation would open the floodgates to an increasing number of attempts to force business to pay for every benefit deemed desirable, or those unattainable at the bargaining table. Indeed, in the 102nd Congress alone we encountered a plethora of mandate proposals including: the bills mandating health insurance coverage, increases in unemployment insurance taxes, COBRA Medicaid expansions, child support garnishment, OSHA, and the consideration of employer-paid continuation of health insurance coverage for former employees, their spouses and dependents. Again the individual goals of many of these bills were laudable, but the small business community does not support the public policy choices made by their sponsors -- that American social policy should be implemented and paid for by American businesses in an effort to keep deficit spending low. Not only is that bad public policy, it also threatens the very existence of our most prolific job creators -- small business. Furthermore, history shows that such policies are dangerous to the health

of economies, especially recessionary economies.

Mandates and the Benefit Package

In all businesses, and particularly small businesses, benefit packaging is a zero-sum game. There are only so many dollars to go around. The types of benefits offered differ for each employer and are based on a variety of factors such as type of industry, size and skill of the workforce, individual workforce needs, competing standards in the industry by geographic location, and the ability to absorb or pass through costs. Only a fixed amount is allocated to benefits utilizing the same budgeting process that determines how much to put towards capital expenditures, expansion, and all other business decisions.

Small employers typically institute a hierarchy of benefits as they mature and become profitable. Vacation and sick leave benefits are generally offered first, followed by health insurance. Small businesses expand benefit coverage as their profitability increases and as employees demand further benefits.

Given the limited resources a small business has at its disposal it is unfair to mandate that a benefit plan contain a parental leave provision when such a mandate might well preclude the offering of other benefits, such as paid prescription drugs, life insurance, health insurance or dental care, which could be more important to that business' employees.

Mandates like parental leave also change the fixed costs of hiring and could affect a firm's employment decisions. Sixty-six percent of the jobs for young Americans are provided by small employers. Small businesses -- labor intensive and pressed for a competitive edge -- may be forced to overlook these same young men and women as the costs of hiring them exceeds their potential value to the firm. An architectural firm's president provides somber testament to "the detriment and harm it (mandated parental leave) would cause to the young people of the future":

We have an Architectural firm with 65 employees, 60% of them are under 30 years of age. The young people are professional, college graduates and our firm is known as "the springboard to Architecture" in Orange County. We provide health insurance, life insurance, Workman's Compensation, paid vacation and major sick leave. There are approximately 400 to 500 architects in Orange County who have worked in our firm and left with our blessing to go on with their careers. Our entire program for young people will come to a roaring halt if this law passes. We could no longer stay in business with a potential of 30 employees home on paid or unpaid leave, and obviously, all interviewing and hiring would be from the 40 years and older group.

Requiring employers to provide parental leave benefits creates clear pressures for subtle discrimination based on age and sex. When choosing between two equally qualified candidates, an employer may be more likely to hire the candidate least likely to take the leave. It is the wage levels and jobs of women of childbearing years which are most at risk in such a situation.

Aside from the fundamental problem with the mandated provision of leave time, there are also many technical difficulties and ambiguities in all such proposals. NFIB has expanded on these technical difficulties at great length, in other hearings. However, here are a few areas the Committee should consider in order to conform with the realities of today's business marketplace:

- * The length and scope of the leave period.
- * The definition of employee - particularly part time.
- * The definition of eligibility for leave.
- * Protections for the employer against abuses, such as little or no notice, intermittent time-off, and moonlighting, as well as increased unemployment compensation and COBRA liability.
- * Complexity of the administrative procedures being used to enforce the Act.

Unfortunately, these problems have not been dealt with in the past, but we again urge the Committee to take these concerns into consideration during the 103rd Congress.

Mandates and the Employee

This is perhaps the most negative aspect of such legislation. Mandates destroy employee choice. Under such legislation, employees are unable to negotiate a benefit package that best meets their individual needs and are prohibited from substituting the mandated leave time for other family-oriented benefits such as flex-time, job sharing, part-time, job sharing arrangements or expanded health care.

Employees lose other unrelated benefits as they are traded for the provision of the mandated benefit. Mandated leave also forces a benefits-for-salary trade-off, which may or may not be to the employee's personal advantage or liking. Further, mandated leave skews the benefit package in favor of employees of childbearing years to the detriment of those who are single, older or childless.

Mandates further harm employees by creating a ceiling. This mandate defines the parameters of the leave package thereby stifling any incentive to provide more generous or tailored leave packages. Mandates also add a fixed cost to the business ledger, which NFIB members find particularly troublesome in a recessionary economy. Couple the fixed cost with the effect mandated leave periods will have upon the stability and productivity of a small business, and the jobs currently provided by the business are put at risk.

Mandated leave may increase employer taxes due to additional pressures placed upon state workers claims and generally higher unemployment rates. Finally, stressful work environments are created when other employees are placed on overtime to compensate for the on-leave employee's workload or for an inexperienced replacement worker.

None of these side effects are beneficial to employees. The vast majority of those working for small businesses chose that type of employment because of the unique atmosphere a small business offers -- a small, family-like, personal

atmosphere where problems and decisions are met with flexibility. A mandate precludes that flexibility.

Conclusion

Because the stipulated leave periods are unpaid, a casual analysis would lead one to believe these bills are cost free. Nothing could be further from the truth.

The proposed bills require employers to continue the existing benefit arrangements of employees on leave. We know from the 1990 NFIB Benefit Survey that two-thirds of the small employers providing health coverage pay the entire premium cost. These expenses would have to be carried by the employer for an employee on leave. Consider, too, the additional coverage provided under "COBRA" if the employee on leave decides to quit after the leave period -- the employer must then extend coverage for another 18 to 36 months. One NFIB member explains:

We recently had a young woman who requested three-months' maternity leave which we granted. In order to hold her job, we employed a temporary employment service to fill this job as secretary/receptionist. During the leave, we paid all benefits. At the end of the leave time, the individual informed us she had decided not to return to the labor force. In other words, we went through a period of inefficiency and delay in being able to seek and train a replacement (as well as monetary outlay to cover fringe benefits) for an employee who did not return.

Mandatory benefits increase fixed costs. Small businesses already operating on thin margins could be forced to eliminate jobs and may well be driven out of business. This legislation also has the perverse effect of hitting a start-up business the hardest. It is generally agreed that a small business' first three years are its most difficult and precarious. Yet under this bill an original employee would be eligible for the mandated leave in one year or less. This large burden could not come at a worse time for a new business.

For those firms that can afford hiring temporary replacements, there are the grave consequences of unemployment insurance mentioned earlier. The open ended medical and elder care and intermittent leave provisions further drive up the cost of this legislation. Add to all of the above the elusive costs in lost productivity, training time, reduced expansion and lower workplace morals and the real price tag of this legislation moves dramatically upward.

With regard to thresholds contained in the legislation, David Birch, the noted MIT economist, has published a book in which he discusses the detrimental "hour glass effect" of Canada. There, government-imposed mandate thresholds have made medium-sized firms extinct -- the Canadian economy must operate with only very large and small firms. Can the United States afford such a cap in growth especially during these uncertain economic times?

The ultimate question is whether this type of government mandate is needed at all. Nearly all large businesses already provide for these types of leaves. Again, the Gallup survey indicates that 93% of small firms already offer some form of parental and medical leave.

While parental and medical leaves are laudable and many times necessary benefits, they are only one option among many. For instance, small firms are more flexible and more likely to offer part-time jobs that allow parents to work and still remain at home with their children for part of the day. This mandate would begin to eliminate those kind of options. NFIB and its members do not want to see flexible benefits replaced by a rigid, non-responsive system. We know that employers and employees are in the best position to structure benefit packages, while Congress dictates ignore individual needs and differences that private negotiations can accommodate.

The workforce demands innovative, flexible and personalized attention to benefit package design that mandates simply cannot provide. Small business remains the powerhouse of the economy because of its ability to respond to those demands. In order to continue to respond and to create jobs, the Congress must refrain from destroying that flexibility by imposing mandates.

As you know, mandated parental and medical leave legislation has been introduced in each of the past five congresses. Few of the details of this legislation

has changed over that period of time and little has been changed to make the legislation a partnership between the employer and the employee. Instead, the legislation seeks to impose a one-size-all policy on a very diverse business community and very diverse labor force.

That one-size-all philosophy was firmly rejected during the mandated leave votes in the 102nd Congress when the presidential veto could not be overridden. The landscape has not changed in the 103rd Congress.

BUSINESSES FOR SOCIAL RESPONSIBILITY

Lotus

Comments in Support of THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Diane Duval, Manager of Benefits and Compensation, Lotus Development Corp.

The definition of "family" has changed significantly during the past twenty years. New family structures, as well as career and lifestyle decisions, have altered today's workforce significantly. The majority of workers are working mothers and fathers, many of whom are single parents.

Corporate America recognizes the daily challenges that confront employees as they strive to achieve a level of balance between work and family responsibilities. Socially responsible companies believe that providing "family friendly" benefits designed to help employees deal with these challenges not only benefit the individual but the corporation as well. Such policies and programs are critical to the support and development of our nation's greatest asset, its people.

In a very competitive, global economy, work/family benefits enable employers to recruit and retain key personnel and foster employee commitment and loyalty to an organization. Flexible work arrangements and leave policies have been advocated at Lotus since the inception of the Company. Our current work/family benefits package (available to all employees who regularly work 20 hours or more per week) includes: job sharing arrangements, employee and family assistance program, childcare resource and referral service, adoption program, on-site and near-site day care facilities, dependent care reimbursement account, eldercare resource and referral service, paid parenting leave, sabbatical leave and unpaid personal leave of absence.

It has been our experience that upon an employee's return to the workplace from a leave of absence, increased productivity has typically been reported and a sustained sense of motivation and positive morale achieved. Moreover, the company is better able to manage the costs associated with recruitment and new hire training without the additional burden of position replacement required as a result of terminations due solely to family issues.

The complexity of leave policy administration varies from company to company based on the size of the employee population, degree of employee geographic dispersement and the ability to track paid time off through an efficient tracking mechanism. Management sensitivity and flexibility in situations requiring flexible work options and leaves of absence is also essential not only to the impacted employee but his/her co-workers in the immediate workgroup.

Certainly, it is in the best interest of the business community at large to support the passage of proposed national legislation pertaining to family and medical leave.

As a member of Businesses for Social Responsibility (BSR), we would also like to emphasize that a great many employers recognize the benefits that will result from passage of the proposed law. BSR is comprised of hundreds of businesses that recognize the essential role of responsible corporate policies in ensuring the long-term health of both our businesses and our national economy. Many BSR members have already instituted formal or informal family leave programs. BSR is committed to working towards the objective of creating a national business environment that allows individuals to make the fullest possible contribution to the profitability of their employers and the prosperity of the nation. We will continue to do our part to raise awareness of these issues in the corporate community, and we would like to offer the involvement of Lotus and other BSR companies to assist in the formulation of family leave regulations. We believe that the Family and Medical Leave Act of 1993 represents a great opportunity for business and government. This policy will benefit workers and businesses across the country. We sincerely hope that you will seize this opportunity. It's not only good for employees. It's good for business. It's the right thing to do.

BUSINESSES FOR SOCIAL RESPONSIBILITY

ADDITIONAL CORPORATE COMMENTS CONCERNING FAMILY LEAVE POLICIES

(Supplement to Lotus/BSR comments supporting H.R. 1, the Family and Medical Leave Act of 1993)

THE STRIDE RITE CORPORATION (Cambridge, MA)

The Stride Rite Corporation has implemented a family leave program for the past 10 years. Arnold Hiatt, recently retired Chairman of Stride Rite, reports that policies such as family leave "clearly contribute to the company's productivity and consistent financial performance which places us in the top 1% of New York Stock Exchange companies."

HUNTER INDUSTRIES (San Marcos, CA)

Hunter Industries has granted personal and medical leaves since the irrigation equipment manufacturer's inception in 1981. According to Ann Hunter-Welborn, one of the firm's managing partners, the company has found their family leave policy, which permits up to 16 weeks of leave, simple to administer for their 650 employees.

"We find that people do not request leaves on a whim. They are generally confined to emergencies, which could force an employee to quit, or jeopardize his or her performance, risking discharge," said Hunter-Welborn. "Since we value our employees and the training require to make them proficient, we feel it is cost effective to grant a leave."

QUAD/GRAPHICS (Pewaukee, WI)

Quad/Graphics employs over 4,000 workers in Wisconsin, which has a mandatory family leave law. The company, noted for many innovative corporate programs, reports that under the law there has been no compromise in corporate productivity and "employees have benefitted from the opportunity to attend to family needs in times of crisis."

(Wisconsin's Family and Medical Leave Act requires that employees be granted up to six weeks' unpaid leave in a year for the birth or adoption of a child, up to two weeks to care for a child, parent, or spouse with a serious health condition, or up to two weeks for an employee's own health condition.)

ESPRIT (San Francisco, CA)

Esprit, which employs over 1,000 workers, has a policy that offers up to six weeks paid family leave (under the medical leave policy). This policy "directly benefits the company." Employees have also been eligible for the unpaid leave benefits proposed in the Family and Medical Leave Act since 1991.

BUSINESSES FOR SOCIAL RESPONSIBILITY

The Challenge

Today more and more companies recognize that their long-term profitability and socially responsible corporate practices are not only compatible, they are inevitably linked. Across the country, manufacturers, retailers and service companies of all sizes are developing -- and benefitting from -- new bottom line strategies that recognize this business reality.

These companies recognize the impact that business has on our daily lives, our communities, and the future. So, they strive for profit, productivity, and innovation built on policies and practices that are responsive to society's conditions and needs. They understand that, in the long run, business and national prosperity requires corporate commitment to the well-being of the workforce, the consumer, the community, and the environment.

Yet too often, company owners and managers don't know how to turn their values or instincts into company practice, or they fear increased operating costs or negative reaction from their peers. Frequently, responsive corporate activities are isolated and are not an integral part of the company's overall planning and practices. And, even socially responsible companies have had no mechanism for affecting public policy.

Businesses for Social Responsibility was formed in 1992 to meet the twin challenge of uniting the fast-growing number of socially responsive businesses in an alliance to shape government policy, the business environment, and public attitudes -- and providing leadership, education, and networks for companies seeking to join the ranks of responsible and responsive companies.

Now you are invited to join Businesses for Social Responsibility. As a Charter Member of BSR, your company will benefit and you will help shape the way business does business in our society and provide new leadership to confront many of today's economic, social, and environmental problems.

The Strategy

To assume a position of leadership in the business community, Businesses for Social Responsibility will:

- ▶ *Provide a strong national voice to influence and motivate public opinion, the media, and decision makers in the public and private sector;*
- ▶ *Advocate and lobby Congress, the Administration, and state governments on public policy, legislation, and regulation;*

- ▶ *Promote responsible corporate practices in the workplace, the marketplace and the community;*
- ▶ *Create national and local networks of businesses that offer access to successful strategies and models, a forum for research and ideas, and education and support programs;*
- ▶ *Develop the marketplace for responsible companies that integrate environmental and social needs in their business policies and practices.*

Members of BSR may choose the level of participation they find most appropriate and useful. For example, a company might use BSR networks and resources to develop new programs, strategies, or working relationships; it may elect to participate in a BSR lobbying campaign on a timely public policy issue; or, it could choose to use its traditional marketing tools -- packaging, advertising, catalogs -- to speak directly to consumers/citizens and thus build public awareness for a critical issue.

BSR programs incorporate the experiences and expertise of members, our relationships with respected individuals and organizations working with issues of concern to the membership, and the practices of successful companies throughout the country.

Regional and local BSR chapters play a prominent part in BSR programs. Local networking offers an on-going exchange of ideas, problems, and solutions based on real-world experiences. Local organizations are a vital source of policy and program ideas and a key element in program implementation. In addition, locally based advocacy and lobbying will impact the increasingly important actions of state legislatures and administrations.

The BSR Education Fund, is an independent, tax-exempt, non-profit organization sponsored by The Tides Foundation. The Education Fund supports information, resource, and education programs that your business can use to create successful — and socially responsible — planning, operations, and marketing functions, as well as build productive relationships with like-minded companies. The Education Fund seeks financial support from both foundations and individuals.

The Issues

Corporate responsibility can no longer be measured solely on how much a company gives to charity at year's end. Instead, it is measured by the on-going operations and commitments of the business. BSR develops and pursues initiatives involving corporate and public policy. BSR's issues and areas of interest reflect the wide-ranging impact business has on our society as well as the needs and concerns of our members in the pursuit of sustainable growth and company prosperity. Task Forces created by the BSR Board of Directors develop policy and program initiatives in each of these areas:

- ▶ *The Workplace* — Company and public policies should combine to create a healthy and supportive work environment that recognizes the value and dignity of the individual worker, the importance of family supportive policies and cultural diversity, the variety of challenges facing women in the workplace, and the need for both safety rules and ethical conduct. A quality workplace contributes to the recruitment and retention of quality employees -- every company's number one asset -- and an employee commitment that translates into enhanced productivity, creativity, and innovation.
- ▶ *The Marketplace* — The environmental impact of products and production methods as well as the daily operations of the business are no longer merely concerns of regulation and government edict. Product sourcing and disposal and energy efficiency and waste management at the workplace are increasingly recognized as bottom line issues as well as keys to our national economic well-being. These issues will be increasingly important to customer decision-making and loyalty as consumer standards and expectations rise.
- ▶ *The Community* — More than ever, business must participate in community life through corporate giving, mentoring and apprenticeship programs, and encouraging and assisting employees to serve as volunteers in local organizations. There are public relations and employee morale benefits from such activities; more important, they foster the health, education, security, and well-being of our future employees, customers, and society.
- ▶ *Sustainable Development and Global Security* — Far-sighted business leaders now recognize that every company must conduct its affairs with one eye squarely focused on the world around us. Day after day, media brings home the lessons to business: ours is a global economy; environmental problems have no respect for international borders; and despite the end of the Cold War, military threats are a continuing reality. Accordingly, even those businesses that are not engaged directly in world trade must help shape the international economic and environmental policies of our governments (state as well as federal), to support the entrepreneurial spirit in the developing world, and to help improve the global business climate.

A Call to Action

Join BSR today! Join the growing number of companies who are committed to developing a socially responsive business environment and are building their successful futures with innovative, competitive, responsible policies and practices. Please fill out and return the enclosed BSR Membership Application. If you have any questions, contact:

*Michael Levett, BSR President
1850 M Street, N.W. Suite 750
Washington, D.C. 20036
(202) 872-5206
(202) 872-5227 (fax)*

BUSINESSES FOR SOCIAL RESPONSIBILITY

BSR BOARD OF DIRECTORS

Ben Cohen: Mr. Cohen is co-founder, Chairperson, and CEO of Ben & Jerry's and a nationally known leader in corporate social responsibility. The company operates with a two part bottom line: a successful business and a force for social change at the same time. The company's financial success has been matched by its national recognition for workplace, environmental and community activities.

John Duerden: Mr. Duerden is President and CEO of the Reebok Division of Reebok International, manufacturer and distributor of footwear, apparel, sports equipment, and boats. Perhaps best known for its worldwide human rights activities, the company has instituted workplace and domestic and international community programs consistent with its commitment to contribute to the prevention of injustice, poverty, and social inequity.

Joel Ferguson: Mr. Ferguson owns several Michigan-based businesses, including First Housing Management, a real estate management firm. He is President of a multi-family housing development company and the ABC affiliate in Lansing. Mr. Ferguson is a founder of Lansing's only locally owned bank. He is a leader in developing quality living facilities for low income citizens. He is a member of the Board of Trustees of Michigan State University and was the first (and only) African American elected to the Lansing City Council.

Alisa Gravitz: Ms. Gravitz is the Executive Director of Co-op America, a non-profit organization dedicated to promoting socially and environmentally responsible businesses, and to creating a more just, sustainable economy. Co-op America links its 57,000 consumer members with its 550 responsible business members through a catalog and annual directory. In addition, Co-op America publishes an action-oriented quarterly devoted to the ideas and institutions needed for economic change, including information on boycotts and social investing.

John Goodman: Mr. Goodman is Managing Partner of Sage Company, which specializes in the development and management of retirement communities, assisted living residences, inter-generational communities, long term care and rehabilitation facilities, home health care, and residential apartments in a dozen states. Mr. Goodman is active with the Young President Organization, the American Cancer Society, and the Johnny B Good Foundation, which he founded.

Ron Grzywinski: Mr. Grzywinski is Chairman and Chief Executive Officer of Shorebank Corporation, a commercial bank holding company that finances and implements for profit and not-for profit community development strategies. He is also Chairman of the Southern Development Bancorporation in Arkansas. Mr. Grzywinski is also a trustee of the Center For Community Change; The Enterprise Development Company; Business and Professional Persons for the Public Interest; and the First American Community Development Corporation.

-over-

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BSR Board -continued-

Laury Hammel: Mr. Hammel is the owner, general manager and tennis pro at the Longfellow Clubs, a group of three tennis and fitness clubs in the greater Boston area with over 6,000 members. Mr. Hammel has created an affiliate business -- the Longfellow Health Center -- offering local residents a holistic approach to healing. He is the founder of New England Businesses for Social Responsibility.

Arnold Hiatt: Mr. Hiatt is the former Chairman of Stride Rite Corp. and serves as Chairman of the Stride Rite Foundation. Under Mr. Hiatt's leadership, Stride Rite became one of America's major shoe manufacturers (Stride Rite, Keds, Sperry Topsiders) and a corporate leader in social responsibility, with multi-generational daycare programs, public service scholarships, progressive family leave programs, urban support programs, and a strong commitment to product quality and customer care.

Bruce Llewellyn: Mr. Llewellyn is Chairman and C.E.O. of The Philadelphia Coca-Cola Bottling Co., The Coca Cola Bottling Company of Wilmington, Inc., and Garden State Cablevision. He served as President of the Overseas Investment Corporation, with the rank of Ambassador. Mr. Llewellyn sits on a number of corporate boards and is active in community affairs.

Helen Mills: Ms. Mills is the President of Soapbox Trading Company, which owns the five Washington, D.C. The Body Shop Stores. She is also the Managing Principal of The Mills Group, an employee benefits consulting firm with a national practice for both for-profit and not-for-profit firms. Both companies are involved in numerous employee motivation, cost management, employee development strategies and community outreach efforts.

Horst Rechelbacher: Mr. Rechelbacher is the chairman and founder of the Aveda Corporation, a Minneapolis-based company which manufactures and develops a collection of hair, skin, beauty and household care products made from pure plants and flowers. Mr. Rechelbacher also created the Give to the Earth Foundation which supports environmental programs and grassroots organizations committed to environmental action.

Mitch Rofsky: Mr. Rofsky is President of Working Assets Common Holdings, which operates the nation's largest socially responsible money market fund. The company recently added three new mutual funds to its family of socially responsible funds. Mr. Rofsky was President of the National Cooperative Bank Development Corporation, and he worked for Ralph Nader for five years at Congress Watch, the legislative arm of Public Citizen.

THE NATION'S NEWSPAPER

50 CENTS

USA TODAY

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mitted' to Penguin, 1D

Businesses: Profits, planet do mix

By Gary Strauss
USA TODAY

Businesses for Social Responsibility today begins its quest to change the way U.S. corporations think.

The 55 members of the new advocacy group, to be announced today, say their brethren can be profitable as well as sensitive to the environment, society and workers.

BSR's founders include counterculture firms such as gourmet ice cream maker Ben & Jerry's, natural cosmetics retailer The Body Shop and Rhino Records.

But more mainstream firms such as shoemaker Stride Rite and fashion maven Esprit also have joined the group, which hopes to add 450 members by mid-1993. Among its goals:

▶ Challenging Vice Presi-

dent Quayle's Council on Competitiveness, which critics say has a pro-business, anti-regulatory agenda.

Its actions are "shamefully short-sighted," says Anita Roddick, Body Shop founder.

▶ Encouraging corporations to donate a percentage of profits to communities and non-profit groups in urban areas. "You can't run a healthy company in an unhealthy soci-

ety," says former Stride Rite chairman Arnold Hiatt.

▶ Easing conflicts between employers and workers, which helps increase "innovation and productivity," says BSR director Michael Levett.

Some other business groups, however, worry BSR's goals, while well-intentioned, could hurt U.S. competitiveness.

▶ New Age alternative, 1B



By Stephen Lefkowitz, USA TODAY
ANITA RODDICK: Body Shop founder avid environmentalist

CALL TO SOCIAL ACTION

Fifty-five companies are forming Business for Social Responsibility to show that 'doing good' — maintaining environmental programs, making workplaces healthy and fulfilling and getting involved in the community — is good for business. Among them:



THE BODY SHOP USA: Anita Roddick, founder of the British cosmetics company, which sells naturally based skin- and hair-care products in recyclable or reliable packaging



PHILADELPHIA COCA-COLA BOTTLING: Soft-drink distributor J. Bruce Llewellyn

By Stephen Leksowitz, USA TODAY

By Susan Peck, USA TODAY

BEN & JERRY'S ICE CREAM: The Vermont-based producer of the Peace Pop and other premium dairy products

The group's mission

- ▲ Challenging the dismantling of environmental and worker-safety rules by the White House Council on Competitiveness
- ▲ Supporting job creation and other urban programs
- ▲ Building and managing low-income housing
- ▲ Encouraging corporate donations, and employee volunteer work

Money

WEDNESDAY, JUNE 10, 1992
COVER STORY

Businesses' cry: Do the right thing

Chamber of Commerce fears more bureaucracy
► Who wants change, 2B

By Gary Strauss
USA TODAY

Can corporations America be a pal to workers, a friend to the environment, a harbinger of governmental and societal change and still be profitable?

Fifty-five companies who'll announce today the formation of Washington-based Business for Social Responsibility think so, and they're ready to spread the gospel.

The association, which includes eclectic counterculture types such as Ben & Jerry's ice cream and the Vermont-based Peace Pop, and more traditional suburban firms like the Stinky Brie — hopes to revolutionize how U.S. businesses operate.

Long on ambition but for now short on blueprints, BSR aims to demonstrate that doing the right thing — be it making the workplace a fulfilling, healthy arena for employees or lobbying lawmakers for equitable tax laws or stiffer environmental regulations — is good for business and long-term profits.

Group re-examines corporate USA's ethics

Continued from 1B

Many of BSR's charter founders have enjoyed huge financial success. But most were startup firms that developed strong market niches with little competition. So it's unclear how — or if — their New Age vision of corporate social responsibility, adopted by older, manufacturing-intensive industries.

Still, most are determined that a new philosophy is needed to keep U.S. business competitive.

"This association offers an alternative to traditional business organizations living with antiquated agendas that are old, narrow and parochial," says Arnold Hilt, recently retired Stride Rite chairman. "Using lobbyist to get special tax breaks or defer pollution-emission standards — that speaks for some of the emerging leadership of the 1990s today." Hilt and other BSR founders say companies in the USA and government leaders have to think about longer-range policy issues that cut a wide ethical swath — even reaching out to long-ignored, blighted urban areas.

"If you're pro-business, you have to be concerned about jobs in the inner city. You have to be concerned about the 38 million Americans living below the poverty line — these people can't buy AIG telephones, Ford cars or Kodak Super 8 film," Hilt says. "Hopefully, our organization will broaden the thinking of both business colleagues and Washington policymakers."

Another reason for prompting change: consumers, who are increasingly savvy about which companies they choose to patronize. "There's a growing marketplace for companies perceived as being socially responsible," says BSR executive director Michael Level. "Increasingly, consumers will make judgments on who made a product and who's selling it."

Roddick and most other BSR founders treat employees well. That's a big part of BSR's mandate — persuading business to adopt more compassionate attitudes toward workers. For example, Stride Rite was one of the first operators of Corporate Care, a national program in which one of three money-management arms to join BSR — offers workers up to 16 weeks of family leave for births or adoptions as well as \$500 to begin a child's education-savings fund.

Dan Lacey, editor of the newsletter *Workplace Trends*, says BSR may be on the cutting edge of promoting change.

"For some time, we've been seeing a shift in the politics of the workplace," Lacey says. "If the American business community can get together and start dealing with it, we're going to have social and economic havoc. We've already seen a sample of that during the Los Angeles riots. The fact that (BSR) is taking up the cause is good news."

Some pro-business groups don't entirely agree, mostly because they fear that BSR will cause more government interference.

Jeff Nesbit, spokesman for the Council on Competitiveness, says, "An overwhelming majority of people who get government involved in the public sector... They want less intrusion and lessing on (of) costs to consumers. I can't imagine why any business would want more red tape and more bureaucracy."

Tyler Wilson of the U.S. Chamber of Commerce says big business already is gun-shy of regulation and fears BSR could fuel more.

"There is a sense of being overwhelmed. Business find it difficult just to ascertain information about their responsibilities," he says.

National Association of Manufacturers spokesman Pete Luntie argues that most Fortune 500 companies already address most employee demands.

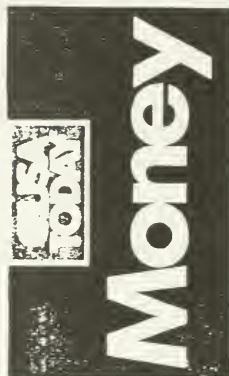
BSR "may have a well-intentioned, poorly thought-out program that is a detriment to competitiveness," Luntie says.

Most of BSR's goals — either persuading change in corporate philosophy or prompting tougher environmental legislation — are steps in the right direction, says Stuart Hart, a University of Michigan strategic management professor who cites environmental degradation as a major global threat.

There's a broad set of issues facing business over the next 10 to 20 years, especially for companies going green. The key challenge is how firms approach the issues and create a mission and strategy to deal with them," Hart says.

"Whatever private or public associations can do to provide models and ways of doing things that can be picked up or expanded on by others, the better off we are," he says.

Contributing: Marybeth White.



WEDNESDAY, JUNE 10, 1992

COVER STORY

Businesses' cry: Do the right thing

Trying to make a difference

Company, location	Business
Aurora Press, Santa Fe	Publisher
Aveda, Blaine, Minn.	Beauty products
Beauty Communications, Washington	Communications
Ben & Jerry's Homemade, Waterbury, Vt.	Ice cream
The Body Shop USA, Cedar Knolls, N.J.	Beauty products
Calvert Group, Bethesda, Md.	Mutual funds
Changing America, Berkeley, Calif.	Consulting services
Cone Communications, Boston	Public relations
Consumers United Insurance, Washington	Insurance
Co-op America, Washington	Information services
Corp. for Enterprise Dev., Hillsborough, Calif.	Ventures
Crib Diaper Service, Crystal, Minn.	Diaper service
Dispersa, Northridge, Calif.	Disperser maker
Earth Care Paper, Madison, Wis.	Paper production
Esprit, San Francisco	Clothing manufacturer
Fenton Communications, Washington	Consultants
First Housing, Lansing, Mich.	Real estate
GCS Services, Danbury, Conn.	Food service equipment
Goodman Group, Mill Valley, Calif.	Consultants
Green Communications, Topanga, Calif.	Television
Hanna Automation, Portland, Ore.	Children's clothing
Harison, Miller, Boston	Recruiters
Joe's Mini-Mart, Nashville	Consultants
Just Reports, New York	Venture capital
Just Desserts, San Francisco	Consulting services
Langstaffer Club, Weyland and Natick, Mass.	Bakery products
Lotus Development, Cambridge, Mass.	Finance data
Lotus Publishing, Cambridge, Mass.	Computer software
Mel Warwick & Associates, Berkeley, Calif.	Computer-related publisher
Merrill Metalworks, Carle, Mass.	Manufacturer
Mills Group, Vienna, Va.	Manufacturers
Pacific Partners, New York	Investment
Philadelphia Coca-Cola Bottling	Bottler
Progressive Asset Management, Oakland, Calif.	Brokerage
Progressive Group, Hadley, Mass.	Telemarketing
Raebook International, Stoughton, Mass.	Footwear maker
Rhino Records, Chicago, Calif.	Entertainment
Rodale Press, A	Publisher
Rosewood Stone Group, Sausalito, Calif.	Investment
Rumpp, Portland, Ore.	The Body Shop franchisee
Sage, Minneapolis, Minn.	Real estate
Scoopbox Trading, Washington	The Body Shop franchisee
Stonyfield Farm, Londonderry, N.H.	Yogurt maker
Sunde Rite, Cambridge, Mass.	Footwear
Teamwork Promotions, Sherman Oaks, Calif.	Consulting
Texas, Washington	Housing developer
The Financial Group, Hampton, N.H.	Clothing maker
USAeast, Washington	Financial services
Uline Renter, Minneapolis	Business
Vegebond Imports, Tulum, Mexico	Clothing importer
Viable Systems, New York	Management consultants
Whole Foods Market, Austin, Texas	Natural foods
Working Assets Common Holdings, San Francisco	Money fund
Working Assets Funding Service, San Francisco	Phone service

Source: Businesses for Social Responsibility

Companies Unite to Oppose Quayle Council

From Associated Press

WASHINGTON — A newly formed coalition of self-described "socially responsible" companies pledged Wednesday to oppose the activities of Vice President Dan Quayle's Council on Competitiveness.

The council, which has pushed for an easing of some environmental laws and limiting civil lawsuits against manufacturers and employers, was denounced as "anti-competitive" by members of Business for Social Responsibility.

"You can't run a healthy company in an unhealthy society for long," said Arnold Platt, outgoing chairman of Sierra Club. The Cambridge, Mass.-based footwear retailer that is a member of the group.

The group of 50 businesses, including Ben & Jerry's Ice Cream, skin and health care retailer The Body Shop USA, and athletic shoe maker Reebok International Ltd., said pursuing short-term profits at the expense of workers, consumers or the environment is not "pro-business."

"The Quayle council claims what it's doing is good for business, but we are business and we're saying it's not," said Michael Levett, the group's executive director.

The New York Times

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NEW YORK, WEDNESDAY, JUNE 10, 1992

50 Concerns Will Join on Social Issues

By BARNABY J. FEDER

A group of more than 50 businesses is set to introduce a new "trade organization for social responsibility" in Washington today. The group, which will be called Businesses for Social Responsibility, intends to support stricter environmental and safety regulations as well as investment in a wide variety of health, education and welfare programs.

"This alliance will advocate a different vision of business than the Chamber of Commerce," said Michael Levett, the new organization's executive director. He said the group's members believed that the current policies advocated by business lobbies in Washington and by Government bodies such as Vice President Dan Quayle's Council on Competitiveness actually undermined the long-term profitability of business and the nation's ability to compete internationally.

The charter members include many of the companies most frequently praised by social investment funds, including the Stride Rite Corporation, Ben & Jerry's Ice Cream, the Lotus Development Corporation, and Reebok International Ltd., but it contains no major manufacturers or major service sector companies. The group intends to recruit more members.

Mr. Levett said that a company's poor reputation or record in one area of concern, such as environmental policies, would not prevent it from being welcomed into the group to share strengths in other areas, such as success in promoting women and minorities. He said the group would want evidence that the company was also trying to address its weaknesses.

"We intend to be as inclusive as possible," Mr. Levett said.

The new organization's agenda includes support for a potpourri of programs that have been initiated or proposed in the private and public sectors. They include an expansion of the use of urban enterprise zones to stimulate the development of inner-city businesses, a policy that the Bush Administration has backed since the recent Los Angeles riots.

Good for the community? May be good for business

By Karen Riley
THE WASHINGTON TIMES

More than 50 companies from 17 states announced yesterday they were creating a fresh voice for business to preach the good that is as good for the bottom line as it is for society.

The Washington-based BSR (Business Social Responsibility), whose charter members include such household names as Stride Rite, Ben & Jerry's and Reebok, will lobby Congress on issues relating to environmental responsibility, a healthy and fulfilling workplace, and community activism. They will seek to educate other companies by example.

"The point is, these investments have

had a very large return," said Arnold Hiatt, outgoing chairman of the Stride Rite Corp. of Cambridge, Mass., and BSR board member.

Stride Rite opened the nation's first corporate child care center in Boston's inner city in 1971, which later expanded to include child care programs in many other public service programs and has won several awards.

"I believe these investments really strengthen our performance," Mr. Hiatt said. Since he became president in 1968, Stride Rite has grown from about \$15 million in sales to \$574 million, with only one year of declining profitability.

see GOOD, page C8

GOOD

From page C1

The new group sees itself as offering a different vision from the nation's two leading business groups, the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM).

"We're tired of hearing the litany from the old tired Chamber and the NAM," Mr. Hiatt said. "Lobbying for tax breaks, safety standards and emission controls is the narrow and parochial approach."

The idea for BSR was derived from a similar group based in New England, founded in 1988 by Laury Hammel, owner of the Longfellow tennis and fitness clubs in the greater Boston area. His regional

organization now boasts some 200 business members.

One of the group's top priorities will be challenging what they say is the shortsighted dismantling of environmental and worker safety rules by Vice President Dan Quayle's Council on Competitiveness.

Other goals include encouraging companies to adopt a policy of donating a percentage of profits — ranging from 1 percent to 10 percent — to community non-profit organizations, and encouraging employee involvement in the community.

"Why is the only responsibility of business to put money back into shareholders' pockets? . . . Companies should be run the way you run your own life," said Anita Roddick, the British founder of the personal care products retail chain, the Body

Shop, which first opened in 1976. Today, the chain, which sells natural products and refuses to test its cosmetics on animals, has grown to more than 750 stores worldwide.

BSR Executive Director Michael Levett said the group won't form a political action committee and won't campaign for political candidates. He couldn't say whether the organization will ultimately push or lobby socially responsible issues to their benefit, as because BSR won't have a legislative agenda ready until the next Congress.

But on issues such as mandated parental leave, the members are way ahead of the legislation, Mr. Levett said.

Eight of BSR's charter members are local companies, including the

Calvert Group of Bethesda, which operates a socially and environmentally responsible mutual fund. Two Washington members, Consumers Union Insurance Co. and the Teleis Corp., are helping build low-income housing in the Parkside area of Anacostia.

Consumer activist Ralph Nader praised the new organization yesterday, saying he suggested it 10 years ago to add to the business dialogue in Washington.

NAM President Jerry Jasnowski said he welcomed any business group that supports more responsible corporate activity. He added, however, that few members of BSR are in manufacturing, which is "on the cutting edge of competition." He urged members of BSR to visit a modern plant to see what strides have been made.

THURSDAY, JUNE 11, 1992

A

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Businesses to Lobby for 'Social Responsibility'

By Martha M. Hamilton
Washington Post Staff Writer

Fifty-five businesses, including Reebok International Ltd., Stride Rite Corp., Esprit de Corp., Working Assets and Lotus Development Corp., announced yesterday that they are creating an alternative business lobby designed to promote an agenda that includes environmentalism, worker welfare and rebuilding inner cities.

"There is growing pressure for companies to be more than just bottom-line involved," said Arnold Blatt, who recently retired as chairman of Stride Rite and who said that the new group would offer a change from "the old, tired litany of the National Association of Manufacturers and the Chamber of Commerce."

Several of the businesses involved in the creation of Businesses for Social Responsibility are major success stories in their own rights, a fact that the group's organizers said they believe will make them more persuasive.

"They have the credibility of business success in addition to right

thinking," said longtime consumer advocate Ralph Nader, a supporter of the group.

Other businesses "are really going to find that doing the right thing gets us all the right results," said Joseph Ferguson, who owns Michigan-based First Housing Corp. and is president of the ABC television affiliate in Lansing.

Founders of the group said that following what they called socially responsible dictates has been an element in the success of their companies. They can demonstrate by example what type of child care and community development programs pay benefits, they said.

A repeated theme during yesterday's news conference was the threat posed to all business by growing unrest in the inner cities and in poorer countries. Businesses should view poor neighborhoods as potential markets, the organizers said.

"If we don't look after the back streets, we're not going to have the main streets," said Anita Roddick, founder of the Body Shop International cosmetic stores. The Body Shop has grown from a single store in Brighton, England, 16 years ago

to an international chain of 750 stores, including 84 in the United States. Last year it had profits of \$46.2 million.

Businesses for Social Responsibility will be based in Washington, headed by Michael Levett, a former vice president for Lucasfilm Ltd., which produced "Star Wars." Levett said the organization hopes to have 500 members within a year.

The organization will not support candidates, he said, but it will pursue a political agenda in addition to encouraging private initiatives. One of its first projects will be to challenge the reduction of federal regulations by the Council on Competitiveness headed by Vice President Dan Quayle, he said.

Levett said the organization wants to be inclusive but that its board will examine applications for membership to make sure corporations are committed to social reform, rather than simply seeking "greenwashing," he said.

Organizers of the group said they believe it will take time to develop major influence, but the companies involved "are on the right side of history," Levett said.



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